

THE HONORABLE THOMAS S. ZILLY

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

HUNTERS CAPITAL, LLC, et al.,

Plaintiffs,

vs.

CITY OF SEATTLE,

Defendant.

Case No. 2:20-cv-00983-TSZ

**DECLARATION OF TYLER WEAVER  
IN SUPPORT OF PLAINTIFFS'  
OPPOSITION TO DEFENDANT'S  
MOTION TO EXCLUDE TESTIMONY  
OF PLAINTIFFS' EXPERTS SHANE,  
PIZA, AND VAN ZANDT**

**NOTED ON MOTION CALENDAR:  
February 17, 2022**

I, Tyler Weaver, declare as follows:

1. I am an attorney with Morgan, Lewis & Bockius LLP and represent Plaintiffs in the above-captioned action. I am over eighteen years of age and am competent to testify herein. I make the following statements based on my personal knowledge.

DECLARATION OF TYLER WEAVER  
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO  
DEFENDANT'S MOTION TO EXCLUDE  
TESTIMONY OF PLAINTIFFS' EXPERTS  
SHANE, PIZA, AND VAN ZANDT  
(Case No. 2:20-cv-00983-TSZ) – 1

**MORGAN, LEWIS & BOCKIUS LLP**  
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2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the Transcript of the Zoom Video Deposition of Jon M. Shane, Ph.D., taken on August 11, 2022.

3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the Transcript of the Zoom Video Deposition of Eric L. Piza, Ph.D., taken on August 16, 2022.

4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the Transcript of the Zoom Video Deposition of Arik K. Van Zandt taken on September 14, 2022.

5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the Expert Report of Arik K. Van Zandt, ASA, CDBV, dated April 28, 2022.

I declare under the penalty of perjury under the laws of the United States of America and the State of Washington that the foregoing is true and correct.

DATED this 13<sup>th</sup> day of February, 2023 at Bainbridge Island, Washington.

s/ Tyler S. Weaver

Tyler S. Weaver

DECLARATION OF TYLER WEAVER  
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO  
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# **EXHIBIT 1**

JON M. SHANE PhD  
8/11/2022

Page 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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HUNTERS CAPITAL, LLC, et al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 20-cv-00983-TSZ
	)	
CITY OF SEATTLE,	)	
	)	
Defendant.	)	

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Zoom Video Deposition Upon Oral Examination  
Of  
JON M. SHANE, Ph.D.

---

DATE: Thursday, August 11, 2022

REPORTED BY: Mindy L. Suurs, CSR 2195

JON M. SHANE PhD  
8/11/2022

Page 14

1 A. Yes.

2 Q. Okay. Do you have any opinions about Dr. Piza's  
3 article?

4 A. Well, I think it's accurate.

5 Q. Based on what?

6 A. Based on the data that he collected, based on the  
7 methodology that he used.

8 Q. And is that based on anything other than your  
9 review of his article?

10 A. No. When I read the article, I understand what  
11 it is that he did.

12 Q. Have you looked at the underlying data or  
13 methodology that he relied upon?

14 A. Well, when you say "looked at the data," what do  
15 you mean? Did I ever have a copy of his raw data?

16 Q. Correct.

17 A. I did not, no.

18 Q. Okay. So taking a look back at Exhibit 162,  
19 which is your report, can you tell me what opinions you're  
20 offering in this case?

21 A. I'm offering opinion as to the generally accepted  
22 police practices that occurred at that time regarding the  
23 Seattle Police Department.

24 Q. And -- go ahead.

25 A. My opinion starts on Page -- Page 11 of the

JON M. SHANE PhD  
8/11/2022

Page 15

1 report, and in Item No. 1, I lay out the two prongs of the  
2 opinion that I'm opining on.

3 Q. And those are that the -- that Seattle Police  
4 Department's actions were not consistent with the Seattle  
5 City Charter Article 5, Seattle City Charter Article 6, and  
6 generally accepted police practices for delivering police  
7 services; is that correct?

8 A. Yes, that's correct.

9 Q. And you're not offering any other opinions in the  
10 case; correct?

11 A. Not at this time, no.

12 Q. Have you been asked to provide any additional  
13 opinions down the road?

14 A. No, not yet.

15 Q. So in terms of the generally accepted police  
16 practices for delivering police services as referenced on  
17 Page 11 of your report, what are the generally accepted  
18 police practices that you believe were not followed?

19 A. Inadequate staffing in the area, not -- not --  
20 not breaking up -- are we going to call it CHAZ or CHOP?  
21 Does it make a difference, by the way?

22 Q. We can call it whichever you prefer. CHOP is  
23 fine.

24 A. Okay. So allowing the CHOP zone to be  
25 established, not dismantling the CHOP zone, not engaging

JON M. SHANE PhD  
8/11/2022

Page 16

1 offenders in and around the CHOP zone, not responding or  
2 slowly responding, delaying the response to calls for  
3 service in and around the CHOP zone, the -- the ambiguous  
4 nature of the orders that were issued surrounding police  
5 response related to the CHOP zone that were issued by Chief  
6 Mahaffey.

7 Q. Any others?

8 A. There may be others as I go through the report,  
9 but that's what I'm thinking of off the top of my head.

10 Q. Okay. And are any of these generally accepted  
11 police practices that you just listed -- are those  
12 contained in any national standards?

13 A. Well, the American Bar Association in 1979 had  
14 set forth the standards for urban policing. The City of  
15 Seattle Charter broadly defines -- and I think the word  
16 they use is must be be liberally construed or something to  
17 that effect -- about providing adequate police protection,  
18 things like that.

19 Q. Okay. So --

20 A. Let me just finish. There's also a body of  
21 national standards called the Commission For the  
22 Accreditation of Law Enforcement Agencies, Commission For  
23 The Accreditation of Law Enforcement Agencies, and goes by  
24 the acronym CALEA, C-A-L-E-A. And CALEA promulgates a body  
25 of national standards about how police practices should be

JON M. SHANE PhD  
8/11/2022

Page 17

1 carried out.

2 Q. And is there a specific provision or -- or policy  
3 as pronounced by CALEA that you believe set the standard  
4 here that the City of Seattle failed to live up to?

5 A. Well, one of the things that comes to mind is the  
6 way in which they approached -- or if I should say failed  
7 to approach -- pedestrian stops. I think Mahaffey in his  
8 deposition said that they were aware through video --  
9 through video feeds, live video feeds that there were  
10 people in and around the CHOP zone with weapons and that  
11 they weren't confronting these folks. And that's not  
12 consistent with established practices for conducting  
13 inquiries about suspicious persons, people who are armed,  
14 people who may be engaged in criminal behavior.

15 Q. And so it's your opinion that the Seattle Police  
16 Department should stop and interview anyone who is carrying  
17 a weapon?

18 A. It depends -- I think it depends on the totality  
19 of the circumstances. In this situation you had the CHOP  
20 zone that was established that was unlawfully developed and  
21 people in and around that area with weapons. I think that  
22 would necessitate an inquiry.

23 Q. And you used the language "totality of the  
24 circumstances." What does that mean?

25 A. Totality of the circumstances are all of the --

JON M. SHANE PhD  
8/11/2022

Page 20

1 the fact that they have a firearm; correct?

2 A. Well, again, it would be based on the totality of  
3 the circumstances, but just -- just to narrowly construe  
4 your question, mere possession of the firearm in an open  
5 carry state would not -- would not provide a constitutional  
6 basis to make a stop.

7 Q. The ABA 1979 article -- what standards did it  
8 pronounce that you believe that the City of Seattle did not  
9 act consistent with?

10 A. Police protection. Providing for a variety  
11 police protection. Investigative services.

12 Q. Can you explain?

13 A. Some of the fundamental precepts of policing are  
14 to provide protection service, generalized police  
15 protection. This is a standard across the country, which  
16 is to respond to calls for service, to identify crimes that  
17 have occurred, and then to investigate those crimes.

18 Q. And does the ABA's 1979 article require in-person  
19 responses to every alleged crime?

20 A. I don't think it is that specific.

21 Q. And you agree that there is more than one way to  
22 respond to a report of a crime; right?

23 A. Well, I guess the answer is it depends. It  
24 depends on, you know, the nature of the circumstances of  
25 what's being reported.



JON M. SHANE PhD  
8/11/2022

Page 21

1 Q. So people can -- strike that.

2 It's not unreasonable for a police department to  
3 have an online police report filing system; right?

4 A. It would not be unusual, no.

5 Q. And it's not unusual to ask people to come to the  
6 precincts to report crimes, to fill out the forms in person  
7 at the police precinct?

8 A. That's correct.

9 Q. And it's not unusual to take police reports over  
10 the phone; right?

11 A. That's correct.

12 Q. And all of those things are reasonable ways to  
13 provide police services; right?

14 A. Well, it's a qualified yes. I mean it depends on  
15 the type of crime we're talking about. You know, you could  
16 have somebody come into the precinct to make a report, give  
17 one over the phone, do it online reporting form. If your  
18 bicycle was stolen, if you were sexually assaulted or you  
19 were shot, you would want police to go to the scene to  
20 examine the scene, to process the crime scene, collect  
21 evidence, talk to witnesses, canvass the neighborhood.

22 Q. So if you were sexually assaulted, it would be  
23 unreasonable for a police department to not go to that  
24 scene?

25 MR. WEAVER: Objection, incomplete hypothetical.



JON M. SHANE PhD  
8/11/2022

Page 22

1           A.    Your question was if you were sexually assaulted,  
2   it would be unreasonable for police to avoid coming to the  
3   scene?

4   BY MR. CRAMER:

5           Q.    Correct.

6           A.    It would be unreasonable, yes.

7           Q.    So it's your opinion that every police department  
8   has an obligation to go to the scene of every sexual  
9   assault?

10          A.    They do.

11          Q.    And under what standard are you relying on to --  
12   to base that opinion?

13          A.    Generally accepted investigative standards about  
14   processing crime scenes, collecting evidence, interviewing  
15   witnesses, canvassing the neighborhood, generalized  
16   investigative responsibilities.

17          Q.    And when must that take place?

18          A.    As soon as possible.

19          Q.    What are the factors that would play into a delay  
20   that might occur?

21          A.    Perhaps if the police department didn't have  
22   vehicles available at that moment.

23          Q.    What if it was unsafe to go to the scene?

24                MR. WEAVER:  Objection, vague.

25          A.    Yeah, I mean you would need to understand a

JON M. SHANE PhD  
8/11/2022

Page 23

1 little bit more about it. When you say "unsafe," unsafe in  
2 what regard?

3 BY MR. CRAMER:

4 Q. What if there was a blizzard?

5 MR. WEAVER: Objection, incomplete hypothetical.

6 A. Well, I mean if there was -- you're saying if  
7 there was snow on the ground that prevented the police from  
8 physically going there?

9 BY MR. CRAMER:

10 Q. Yes.

11 A. Yeah, that might -- that might qualify as an  
12 instance where police might delay their response to the  
13 scene.

14 Q. What if there was a staffing shortage?

15 A. Well, the -- again, it depends. When you say  
16 "staffing shortage," do you mean staffing shortage in the  
17 sexual assault investigative division? Do you mean  
18 staffing shortage in the patrol division? Where is the  
19 shortage?

20 Q. What if there's a staffing shortage in the  
21 investigative unit?

22 MR. WEAVER: Objection, incomplete hypothetical.

23 A. If someone has been -- if someone has been  
24 assigned that case, the answer is there may be -- there may  
25 be a reason why staffing impacts your ability to respond.

JON M. SHANE PhD  
8/11/2022

Page 24

1 I mean, you know, it could be vacation as well, you might  
2 be on vacation or somebody might be on vacation.

3 BY MR. CRAMER:

4 Q. So there are circumstances where it would be  
5 reasonable to not provide an in-person response to a sexual  
6 assault?

7 A. Well, I'm not talking about not providing  
8 response; I'm talking about delaying a response. I mean a  
9 blizzard would delay you, staffing shortage might delay  
10 you, if you didn't have a vehicle, that might delay you,  
11 but that wouldn't prevent you from ever going. It  
12 shouldn't prevent you from ever going.

13 Q. And in an instance where someone who experiences  
14 sexual assault doesn't have a police officer respond ever  
15 to the scene, your position is that that would violate  
16 generally accepted practices and standards of police  
17 practices?

18 A. Can you say that again? I'm sorry.

19 Q. So your opinion is that any decision by a police  
20 department to not investigate the scene of a sexual assault  
21 is a violation of generally accepted police practices?

22 A. The only way I can understand that it might not  
23 be investigated would be something known as what's called  
24 exceptionally clear.

25 Q. What's that?

JON M. SHANE PhD  
8/11/2022

Page 25

1           A.    Okay, so let's say -- this is 100 percent  
2   hypothetical, so I'm not using a real example -- woman is  
3   sexually assaulted and she knows that it was her brother's  
4   boyfriend, and her brother's boyfriend -- so she goes to  
5   the police department to report it, and during the report,  
6   the police officers are about to go to the scene and they  
7   learn that there's been a motorcycle accident, and they  
8   respond to the motorcycle accident and they find that the  
9   brother's boyfriend who committed the sexual assault is now  
10   dead, and there's never going to be an -- there's never  
11   going to be a prosecution. That case is what is known as  
12   exceptionally clear, and if the police didn't investigate  
13   that crime scene, that would be -- that would be  
14   acceptable.

15          Q.    Are you aware of any specific crimes that were  
16   not investigated during -- that occurred in the red zone  
17   area of Seattle in June 2020?

18          A.    Not specific crimes, no.

19          Q.    Okay. Any other national standards that you  
20   believe that the City of Seattle and the Seattle Police  
21   Department failed to abide by in June 2020 in the CHAZ/CHOP  
22   area?

23          A.    No -- excuse me -- not off the top of my head,  
24   no.

25          Q.    Okay. And you didn't include the ADA standards

JON M. SHANE PhD  
8/11/2022

Page 26

1 or the CALEA standards in your report as standards that  
2 were violated; is that right?

3 A. No, they're not in there, no.

4 Q. Any state-level standards that -- that you  
5 believe that the City of Seattle failed to abide by?

6 A. I haven't seen the state-level curriculum for  
7 basic course for police officers, but given my  
8 understanding and my longstanding history of police work  
9 that police officers who were certified in the state of  
10 Washington undergo training that is vastly similar to that  
11 across the country. So the standards that are promulgated  
12 in the police academy about investigation, patrol,  
13 response, and those sorts of things would hold true.

14 Q. And what are those?

15 A. Investigating crimes that occur, responding when  
16 called.

17 Q. Does every call to the police necessitate a -- an  
18 in-person response?

19 A. Not necessarily.

20 Q. Okay. So there are some crimes that don't  
21 necessitate an in-person response by the police?

22 A. Yes.

23 Q. And does the -- does the decision whether to  
24 respond -- is that something that the police should assess  
25 using the totality of the circumstances?



JON M. SHANE PhD  
8/11/2022

Page 27

1           A.    Well, we need to qualify your question just a  
2   little bit.  Are you talking about at the policy level  
3   when -- when the chief and the command staff are  
4   undertaking policies of the police department and they're  
5   undergoing a planning process about how they're going to  
6   respond and what they're going to respond to manage  
7   workload and things like that, or are you talking about the  
8   incoming phone call to the call-taker at a call center and  
9   how they prioritize that incoming call?

10          Q.    Well, let's take them in turn.  In -- as a policy  
11   level, do the chief and the decision-makers within the  
12   police department have discretion in determining what types  
13   of crimes get in-person responses?

14          A.    Somewhat.

15          Q.    And what is that based on?

16          A.    Seriousness of the offense.

17          Q.    Okay.  And what crimes do require an in-person  
18   response, under your view of generally accepted police  
19   practices?

20          A.    Well, I'll use -- I'll just use a broad -- a  
21   broad colloquial term and call them felonies.  So every  
22   state is slightly different in terms of their wording, but  
23   felonies:  Murder, rape, robbery, aggravated assault,  
24   burglary, arson, car theft.

25          Q.    Every felony including minor felonies?  Is

JON M. SHANE PhD  
8/11/2022

Page 28

1 that -- would you --

2 A. What do you mean by a minor felony?

3 Q. Let's say possession of a controlled substance.

4 A. Well, you would need a little bit more to  
5 understand that. I mean is it -- is it a -- is it a stash  
6 house? Is it a -- are they actively dealing narcotics  
7 right now? Did mom find a small quantity in junior's  
8 backpack?

9 Q. So the answer is it depends?

10 A. It does.

11 Q. So --

12 A. But not violent crime.

13 Q. So every violent crime requires an in-person  
14 response?

15 A. It does, yes.

16 Q. And that's based on what? What -- what standards  
17 can I look to that tells me that?

18 A. Generally accepted police practices about how the  
19 police are organized and what it is they do and why they  
20 carry out their function and their obligations to  
21 provide -- to provide service to the community in terms of  
22 law enforcement, prosecution, offender accountability.

23 Q. Okay. You keep saying -- go ahead.

24 A. Reducing harm to the community.

25 Q. So you keep saying generally accepted police

JON M. SHANE PhD  
8/11/2022

Page 29

1 practices, and I'm asking you what writing can you point me  
2 to that articulates that every felony requires an in-person  
3 response?

4 A. Well, I can't -- I can't say definitively if  
5 there's something specific that is that narrowly tailored,  
6 but I don't think you would find that necessarily anywhere  
7 across the country, other than to say that the generalized  
8 practice for police officers to provide, the things I just  
9 mentioned like protection, investigative services, reducing  
10 harm, protecting victims, offender accountability -- all  
11 those things are generally accepted practices. I mean like  
12 I said, I can't tell you that there is a specific statute  
13 or a specific -- a specific rule or regulation.

14 Q. Okay. And I think you just testified to this,  
15 but you didn't identify any state-level codified standard  
16 that the City of Seattle or the SPD's conduct was not  
17 consistent with; correct?

18 A. Not at the state level. The city charter,  
19 though, mentions the things that I was talking about.

20 Q. Okay. And that's where I was going to go next.  
21 So in terms of local standards, you've identified the City  
22 of Seattle Charter Section Article 5 and the City of  
23 Seattle Charter Section 6; is that correct?

24 A. Yes.

25 Q. Have you reviewed any other local standards in



JON M. SHANE PhD  
8/11/2022

Page 30

1 connection with this case?

2 MR. WEAVER: Objection.

3 A. Not that I can think of.

4 BY MR. CRAMER:

5 Q. Okay. And so you're not aware of any other  
6 locally set standards that may have been relevant to the  
7 conduct of the City of Seattle and SPD in connection with  
8 their dealings and operations for the CHOP?

9 A. There may be some orders that were promulgated by  
10 the police department regarding police response or  
11 investigative services that may exist that I have not seen.

12 Q. But you're not relying on any of those; correct?

13 A. No.

14 Q. And did you look for any other local standards  
15 that may have been applicable?

16 A. No.

17 Q. And so what you're comparing the City's actions  
18 to here is Charter Section 5, Charter Section 6, and the  
19 amorphous generally accepted practices that you have  
20 described here today; is that right?

21 MR. WEAVER: Objection, misstates the testimony.

22 Go ahead.

23 A. I wouldn't characterize them as amorphous, but  
24 the answer is yes, the generally accepted police practices.

25 BY MR. CRAMER:

JON M. SHANE PhD  
8/11/2022

Page 31

1 Q. But you can't point me to anything in writing  
2 that enunciates those generally accepted practices?

3 A. Nothing specific.

4 Q. So I want to take a look at the bottom of  
5 Page 11.

6 A. Okay.

7 Q. Okay? And, you know, I'm not going to try to  
8 play any tricks on you today; I plan to just walk through  
9 your report, so you will figure that out soon enough that  
10 we're just going to walk through this systemically.

11 So the contents of this first Paragraph A where  
12 it says "Justification for your opinion," the information  
13 that you were citing there -- that comes from the materials  
14 you considered; is that correct?

15 A. Yes.

16 Q. And taking a look at the first sentence of that  
17 paragraph, so just tell me what you understand about the  
18 heated interactions that occurred outside of the East  
19 Precinct.

20 A. Well, it's my understanding from the documents  
21 that I reviewed that there had been some ongoing tension  
22 both between the police and the community. I can't -- I  
23 can't -- I can't say with, you know, any certainty what the  
24 motivation was. I know there's been a lot of talk about  
25 things like George Floyd and social equity and, you know,

JON M. SHANE PhD  
8/11/2022

Page 32

1 things like that, but I don't know that that's the case.

2 Q. Okay. So June 8th, 2020 -- that's approximately  
3 10 days after George Floyd was murdered; is that correct?

4 A. I don't know. That's a good question. I don't  
5 know when the man lost his life.

6 Q. Okay. In the summer of 2020, were you generally  
7 aware of protests occurring around the country in the  
8 aftermath of Mr. Floyd being murdered?

9 A. Yes.

10 Q. And do you have any reason to doubt that the --  
11 that the protests occurring outside of the East Precinct  
12 were related to or in the aftermath of Mr. Floyd's murder?

13 A. I -- I don't have anything either way, to be  
14 perfectly frank with you. I don't -- I mean I only know  
15 what I generally heard anecdotally, you know, in media  
16 reports and things like that.

17 Q. And describe to me the -- I think you called them  
18 heated interactions between police and protesters. How  
19 frequent were those?

20 A. I don't know the frequency.

21 Q. And did those involve uses of force by police  
22 officers against people in the -- protesters and people in  
23 the public?

24 A. You mean police using force against protesters at  
25 that moment outside the East police precinct?

JON M. SHANE PhD  
8/11/2022

Page 33

1 Q. Yes.

2 A. I didn't see anything relative to police using  
3 force. Not that I remember.

4 Q. Okay. So you didn't recall Chief Mahaffey  
5 testifying uses of force by the police against protesters  
6 outside the precinct?

7 A. I mean it may be in his deposition; I don't  
8 recall. I remember there was some discussion about he said  
9 that there were -- rocks and bottles were thrown and things  
10 like that, but that's use of force against the police, not  
11 the other way around.

12 Q. Right. And so you're aware of force being used  
13 against the police outside the precinct that first week of  
14 June; right?

15 A. Yeah, there were a few things in discovery about  
16 that, yes.

17 Q. And was that a nightly occurrence the first week  
18 of June?

19 A. I don't know the frequency.

20 Q. Would it be important for purposes of your  
21 testimony to know the frequency?

22 A. For what -- for what purpose?

23 Q. Well, you're opining that the Seattle Police  
24 Department didn't act reasonably in -- on June 8th and  
25 subsequently; correct?

JON M. SHANE PhD  
8/11/2022

Page 34

1 A. I mean in certain instances, yes.

2 Q. So wouldn't it be something that would be  
3 important to that opinion what had been going on in that  
4 exact same area as between the police and members of the  
5 public and the protesters in the eight days leading up to  
6 that?

7 A. Well, I documented here that there were a number  
8 of heated interactions, so I mean we have some idea of what  
9 was occurring there.

10 Q. But you concede that there was use of force  
11 against police officers that first week of June; correct?

12 A. There was use of force against the police,  
13 correct.

14 Q. And -- but you don't know whether there was use  
15 of force against protesters?

16 A. Well, I don't recall. I don't recall if Mahaffey  
17 testified to that or not.

18 Q. Do you recall whether there was tear gas used  
19 ever to clear those protests during that first week of  
20 June?

21 A. I don't -- I don't remember if -- if gas was  
22 actually deployed. I remember the chief was speaking about  
23 gas, but I don't know if the gas was actually deployed. I  
24 don't remember.

25 Q. Did the police ever -- well, you might be able to



JON M. SHANE PhD  
8/11/2022

Page 35

1 help me with this. Is tear gas -- what's tear gas?

2 A. Well, that's a generic -- that's a generic  
3 term -- tear gas. The better way to tell is called  
4 chemical munitions.

5 Q. Is CS a type of tear gas?

6 A. Yes.

7 Q. And would the use of tear gas -- would that be a  
8 use of force?

9 A. It's a use of force, yes.

10 Q. And did the police ever use blast balls in that  
11 first week of June?

12 A. The same answer. I recall something being talked  
13 about that, I believe. I believe Chief Best in her -- in  
14 her video with the mayor discussed something about that,  
15 but I don't remember if she said they were actually  
16 deployed or if they were ready or if they were withheld. I  
17 don't remember what she said.

18 Q. And did the police ever utilize pepper spray that  
19 first week of June, to your knowledge?

20 A. I don't recall.

21 Q. Would pepper spray be a use of force?

22 A. It is, yes.

23 Q. And blast balls also use of force?

24 A. Yes.

25 Q. Now, when the -- are you aware of or did you look

JON M. SHANE PhD  
8/11/2022

Page 65

1 hypothetical. Sorry, go ahead.

2 A. You're -- I guess you're assuming that use of  
3 force is going to happen. We don't know that use of force  
4 is going to happen, but police are not in the business of  
5 retreating in the face of a threat of someone resisting  
6 them or using force; in fact, just the opposite is true.  
7 Police officers are empowered to stand their ground and  
8 press forward to achieve a lawful objective in the face of  
9 threats and resistance.

10 BY MR. CRAMER:

11 Q. Are you aware of any policies that would require  
12 deescalation tactics like withdrawal for a police  
13 department?

14 MR. WEAVER: Objection, vague.

15 A. Let's -- let's talk about that a little bit. So  
16 first I want to talk about deescalation, then I want to  
17 talk about withdrawal.

18 A generalized police practice in terms of  
19 police/citizen encounters is always to deescalate. Even --  
20 even at the rudimentary dispute level, police -- again,  
21 hypothetical -- police officer responds to a dispute  
22 between a customer and a proprietor at a hardware store,  
23 you know, over the -- I don't know -- over the -- an  
24 incorrect amount of change that somebody -- that the patron  
25 offered -- police officers are -- are -- are using

JON M. SHANE PhD  
8/11/2022

Page 66

1 deescalation tactics to assuage that situation. It's a  
2 natural training element. It's something that the police  
3 do: They resolve disputes, day in and day out. And  
4 deescalation is part of that, in many different respects.  
5 I mean there's all sorts of hypotheticals that we could  
6 think of.

7 BY MR. CRAMER:

8 Q. Let me interrupt you. You were talking about  
9 deescalation between two individuals in that hypothetical;  
10 I'm talking about deescalation as a police tactic to  
11 deescalate the likelihood of conflict between the police  
12 officer and a -- and a member of the public.

13 Would you agree that deescalation is -- in that  
14 respect -- is a reasonable goal?

15 A. Are you using the example I just gave?

16 Q. No, I'm asking you to -- whether you agree that  
17 deescalation tactics to reduce the likelihood of conflict  
18 between a police officer and a member of the public or a  
19 suspect is -- is a reasonable goal.

20 A. I'm sorry, I just want to make sure I'm clear.  
21 Is -- is it reasonable for a police officer to use  
22 deescalation strategies to -- to deescalate a situation  
23 between the officer themselves and a member of the public,  
24 because there's some heated disagreement over something?

25 Q. Sure.



JON M. SHANE PhD  
8/11/2022

Page 67

1 A. The answer is yes.

2 Q. Okay. Is there -- are there any policies you're  
3 aware of that articulate how that deescalation is to be  
4 accomplished?

5 A. Well, when you say "policy," I want to make sure  
6 we're clear on that. I mean generalized police training  
7 regarding deescalation strategies include things like --  
8 like talking, like offering alternatives, being an active  
9 listener, offering up alternatives. There's -- there's  
10 nothing that I've ever seen that says police officers shall  
11 withdraw from -- from a particular scene as their primary  
12 deescalation strategy.

13 Q. But is withdrawal a generally accepted  
14 deescalation tactic?

15 A. Again, the answer is it depends. There's  
16 something known as tactical withdrawal. Okay? Tactical  
17 withdrawal is I think what you're alluding to: I'm going  
18 to drop back and I'm going to withdraw from the  
19 confrontation in order to -- to regroup and reassess and  
20 then move -- and then press forward again.

21 Q. Well, but do you necessarily need to press  
22 forward again?

23 A. Yes. Yes, you would not withdraw and abandon  
24 whatever it is that you're abandoning. You wouldn't  
25 abandon the area, the situation. For example, if I showed

JON M. SHANE PhD  
8/11/2022

Page 68

1 up on a domestic violence call and somebody was really  
2 angry at me because I was a police officer invading their  
3 personal space in their living room and they were trying to  
4 indimidate me, I'd say, okay, well, I'm going to back out  
5 now notwithstanding the crime that has occurred here  
6 because I don't want to escalate things. That would not  
7 happen.

8 Q. And what if you were -- what if a crime had not  
9 yet occurred but you were concerned about escalating the  
10 situation such that you might need to use force? Would  
11 utilizing deescalation tactics in that situation be  
12 reasonable?

13 MR. WEAVER: Objection, incomplete hypothetical.

14 A. All right, so let's break that down a little bit.  
15 You arrive at the scene of an incident and you don't know  
16 whether or not a crime has occurred yet because you have  
17 yet to investigate it, but your presence at that scene is  
18 escalating something or -- am I right so far?

19 BY MR. CRAMER:

20 Q. Your -- whether engagement, further engagement  
21 with the person may lead to use of force, are you permitted  
22 to instead withdraw and allow time to gain voluntary  
23 compliance?

24 MR. WEAVER: Same objection.

25 A. Again, the answer is it depends. It depends on

JON M. SHANE PhD  
8/11/2022

Page 69

1 what it is you're investigating, what's going on, how  
2 this person's reacting. You're not -- a police officer is  
3 not going to go to the scene of an incident and back away  
4 from someone who is getting louder and louder and louder to  
5 the point where you may need to use force. If that  
6 person's going to provoke a physical encounter with you,  
7 it's not your obligation to retreat and desist; you have an  
8 obligation, just the opposite, to stand your ground and  
9 preserve the peace and perhaps protect life, protect  
10 property, deescalation strategies while you're doing that.

11 BY MR. CRAMER:

12 Q. So standing your ground -- you have an obligation  
13 to stand your ground as opposed to determining to first use  
14 deescalation tactics? Is that what you're saying?

15 A. No, I think those things are coterminous. I mean  
16 let me just make sure I'm understanding you. If police  
17 officer arrives at the scene of an incident and they're  
18 confronted by someone who's hostile, police officer is  
19 automatically right then and there going to use  
20 deescalation tactics. They're going to talk to them,  
21 they're going to listen, they're going to calm everybody  
22 down. At the same time, they are standing their ground.  
23 They're not leaving.

24 If this particular person that you're interacting  
25 with, be it a victim, a witness, an offender -- if that

JON M. SHANE PhD  
8/11/2022

Page 70

1 person becomes combative to the point where they commit a  
2 crime, you're not going to withdraw and allow them to  
3 commit that crime; you're going to stand there, press  
4 forward, and achieve a lawful objective.

5 Q. And the deescalation tactics that you were  
6 describing -- can those be applied -- strike that.

7 Would it be unreasonable to apply those same  
8 deescalation tactics prior to facing an imminent threat?

9 MR. WEAVER: Objection, incomplete hypothetical.

10 A. Okay, so what -- what is my hypothetical?  
11 Meaning I roll up to the scene of a domestic violence  
12 incident --

13 BY MR. CRAMER:

14 Q. Let's talk about it in terms of -- of June 8th.

15 A. Okay.

16 Q. Would -- in your mind, or in your opinion, would  
17 it have been reasonable for SPD to have considered  
18 deescalation tactics on June 8th when determining what  
19 their course of action was going to be for later that  
20 night?

21 A. Yeah, deescalation is always an -- is always an  
22 option, yes.

23 Q. And --

24 A. What are they deescalating with though? I just  
25 want to make sure because I'm trying to envision the scene.

JON M. SHANE PhD  
8/11/2022

Page 71

1 So you have a police precinct that's -- you know, that's  
2 got fencing around it. Who's conducting the deescalation?  
3 Who's outside? What's being said? Who's the group leader?  
4 Set the scene. Set -- give me some more context.

5 Q. Sure. So every night for the previous week, SPD  
6 set up a barricade across Pine Street in front of the East  
7 Precinct. Okay?

8 A. Okay.

9 Q. And every night protesters appeared at the  
10 barricade and there were, on many occasions, uses of force  
11 going both ways. Okay?

12 A. Okay, fair enough.

13 Q. Officers were injured, members of the public were  
14 injured, tear gas was used, blast balls were used, pepper  
15 spray was used.

16 After seven days of this, would it have been  
17 unreasonable for Chief Mahaffey to have utilized or  
18 considered deescalation tactics, including removal of  
19 police from the barricades in front of the East Precinct?

20 MR. WEAVER: Objection. Compound, incomplete.  
21 Go ahead.

22 A. It would be unreasonable for the police  
23 department to withdraw from that situation. I have no  
24 problem using deescalation strategies, but one of them  
25 would not be abandoning the police precinct.



JON M. SHANE PhD  
8/11/2022

Page 72

1 BY MR. CRAMER:

2 Q. Okay. So withdrawal is not a valid deescalation  
3 tactic in your opinion?

4 A. Not based on the things that you just explained  
5 to me, no.

6 Q. Did -- was the activity that occurred -- strike  
7 that.

8 As a result of the police department temporarily  
9 vacating the precinct, did the precinct get burned down?

10 A. No, it did not.

11 Q. Did protesters attempt to enter the precinct that  
12 you're aware of?

13 A. No, not that I'm aware of. I don't think they  
14 did.

15 Q. Okay. Now, you testified earlier that you think  
16 it would have been reasonable for the police to -- instead  
17 of withdrawing, to have put up new fencing and stationed  
18 officers outside of the precinct. Is that a fair summary  
19 of what you said earlier?

20 A. That's reasonable, yes.

21 Q. Okay. Is it possible that doing that would have  
22 led to uses of force as between protesters and the police  
23 officers stationed behind the fencing?

24 A. Well, I hesitate to forecast in that sense.  
25 Maybe. I don't know.

JON M. SHANE PhD  
8/11/2022

Page 85

1 A. That could happen.

2 Q. And that's to protect the safety of the officers  
3 working there?

4 A. Anybody going into that facility with asbestos.

5 Q. Sure, including police officers who are working  
6 there?

7 A. Sure.

8 Q. And -- and others in the public; right?

9 A. Witnesses, victims, complainants, arrestees,  
10 vendors.

11 Q. And if they did so, presumably the officers would  
12 be operating out of another precinct or different location  
13 while the precinct was closed?

14 A. They probably would be; the question is how far  
15 away from everything would they be. I mean a lot of  
16 times -- I'll give you an example. There was something  
17 similar to that in the Newark Police Department and they  
18 put trailers up on-site.

19 Q. But there's no requirement they do so; right?

20 A. No, it's a policy decision about how -- how they  
21 want to deliver police services to the City.

22 Q. And what available space there probably is at the  
23 location where the precinct was located; right? I mean in  
24 Newark I guess you would have -- there would have had to  
25 have been space to put trailers is my point.

JON M. SHANE PhD  
8/11/2022

Page 95

1 right?

2 A. It is, yes.

3 Q. And they could have been anti-police protesters  
4 and still been peaceful if they weren't protesting at that  
5 immediate moment; right?

6 A. They could be.

7 Q. And if the police were to have reinserted  
8 themselves, isn't it possible that those people who were  
9 peaceful a moment earlier could become hostile?

10 A. Although that's possible, that's not how police  
11 departments operate. They don't operate on the idea that  
12 we can't occupy this police facility because someone might  
13 be annoyed with us. So there's always a segment of society  
14 that's annoyed with the police for some reason.

15 Q. Right, but you understand, having the full review  
16 of the record here, that what was going on in this area  
17 over the first part of June was more than annoyance; right?

18 A. Well, it wasn't declared a riot. There's nothing  
19 in the record that indicates it was declared a riot.

20 Q. So you've not reviewed anything indicating that  
21 at any point was declared a riot?

22 A. I haven't seen anything that said that the mayor  
23 issued a declaration of emergency or that there was a riot  
24 declared.

25 Q. Okay. And if the mayor had issued a declaration



JON M. SHANE PhD  
8/11/2022

Page 96

1 of emergency relating to the protests that were occurring  
2 outside of the East Precinct in early June, is that  
3 something that would impact your assessment?

4 A. Assessment of --

5 Q. Of the reasonableness of the police department's  
6 actions.

7 A. Well, again, the answer is depends. It depends  
8 on context. Just because, you know, a riot is declared in  
9 one particular part of the city doesn't mean you abandon  
10 police precincts. That happened in Newark, New Jersey, in  
11 1967. The city had widespread rioting, well-documented,  
12 it's a, you know, historical fact and it's an historical  
13 understanding of police work about -- about the  
14 relationship between the police and the community. And the  
15 police department never abandoned the police precincts.  
16 They took gunfire to the point where they actually bricked  
17 up the front-facing windows of the police precinct, but  
18 they never abandoned the facility.

19 Q. Would you agree that policing has evolved since  
20 1967?

21 A. Well, it depends on what you mean by that.

22 Q. So you can't agree that policing has evolved  
23 since 1967?

24 A. Well, the answer is it depends. When we talk  
25 about "evolved" -- let me give you an example. The Newark

JON M. SHANE PhD  
8/11/2022

Page 97

1 police department, one of the oldest police departments in  
2 the country -- third oldest behind New York and Boston --  
3 has had community substations and police precincts since  
4 the late '60s, early '70s and has participated in some of  
5 the most foundational studies on police and fear and  
6 relationship to the community.

7 Police precincts and community substations have  
8 gained widespread acceptance from that, and they still  
9 continue in that vein today. So my point is when you talk  
10 about evolving, we're still using things -- when I say  
11 "we," the policing industry and the city of Newark -- are  
12 still using concepts that they pioneered in the 1960s and  
13 1970s.

14 When you talk about the evolution of policing, we  
15 have to be more specific. Training has evolved, technology  
16 has evolved. They're still using police cars. We've been  
17 using police cars since 1950s.

18 Q. What about concepts around deescalation? Have  
19 those evolved since 1967?

20 A. They have, yes.

21 Q. Have they evolved since 1980?

22 A. I would say -- I would say a qualified yes. And  
23 let me give you an example. I became a sworn police  
24 officer in 1989, so nine years removed from your time frame  
25 of 1980, and when I was in the police department, we took a

JON M. SHANE PhD  
8/11/2022

Page 98

1 course called Verbal Judo, and you have to just envision  
2 what they're talking about. Verbal judo, meaning you're  
3 trying to disarm people with your words, you're trying to  
4 assuage them, you're trying to deescalate things.

5 A lot of the deescalation strategies today are  
6 just repackaged under different names, and since at least  
7 1989, when I can attest to my training, it has been  
8 relatively the same. There has not been a lot of different  
9 things: Being an active listener, talking, trying to  
10 empathize with people, this idea of procedural justice,  
11 meaning police officer says to somebody, "I'm here to  
12 listen. Tell me your side of the story. I want to make --  
13 if I'm going to make a decision, I want to make sure I make  
14 the best decision possible." I mean those things have been  
15 talked about for 30-plus years, since I became a police  
16 officer.

17 Back to your original point about evolving, the  
18 answer is it depends on what we're talking about in terms  
19 of evolution. Technology is something that has probably  
20 evolved the most.

21 Q. So going back to your report, so with the  
22 existence of armed protesters outside of the precinct,  
23 have -- would the existence of those be something the  
24 police could reasonably take into consideration in deciding  
25 whether to attempt to clear the streets and sidewalks or

JON M. SHANE PhD  
8/11/2022

Page 113

1 MR. WEAVER: Objection, incomplete hypothetical.

2 A. When you say "tools," are you referring to force  
3 options or -- or --

4 BY MR. WEAVER:

5 Q. Yeah, force options.

6 A. Well, the answer is it depends on what sort of  
7 resistance they were being met with.

8 Q. Okay. Could they have used -- you said they  
9 could have used verbal commands; is that right?

10 A. Yes.

11 Q. And they could have used the types of nonlethal  
12 munitions we talked about earlier, including tear gas; is  
13 that right?

14 A. Let's call them less lethal.

15 Q. Less lethal, sorry.

16 A. Appropriate term.

17 Q. Bullet balls, pepper spray, those items?

18 A. Well, at some point there was a temporary  
19 restraining order issued against using tear gas and -- and  
20 some of those -- some of the less lethal options that  
21 you're talking about. So I don't remember exactly when  
22 that was, but if it was in that window, then they may have  
23 been limited as to what their options were, their less  
24 lethal options that is.

25 Q. And would those limitations have been something

JON M. SHANE PhD  
8/11/2022

Page 114

1 the police would have needed to or would have been  
2 reasonable for the police to have taken under consideration  
3 in assessing their options?

4 A. Yes.

5 Q. And if, in taking into consideration the  
6 limitation of their ability to use that -- those munitions,  
7 they decided it wasn't safe for officers or the public to  
8 try to reoccupy the precinct at that point, would that have  
9 been a reasonable decision?

10 A. Well, it depends on what information they had and  
11 what they mean by -- what do you mean by "safe"? There's  
12 always the risk that a police officer may be injured  
13 carrying out their duty.

14 Q. Okay. What about the safety of the public in --  
15 in trying to reoccupy the precinct? Is that something that  
16 they can reasonably take into consideration?

17 A. Who are you referring to when you say "the  
18 public"?

19 Q. Individuals in the area. Let's say tourists who  
20 had come to the CHOP or the CHAZ to -- to see it.

21 A. Well, the answer is you have to -- you have to  
22 account for those sorts of things, but it shouldn't -- it  
23 shouldn't get to the point where you can't effectively  
24 carry out police operations. And if the police are in a  
25 position where they can't carry out adequate police



JON M. SHANE PhD  
8/11/2022

Page 115

1 services and provide protection to the community, then they  
2 have an obligation to the public to move the public before  
3 they begin to reoccupy that area.

4 Q. And in order to move the public, how would they  
5 do that?

6 A. Well, the answer is depends on who's going there  
7 and what they're doing and how it's happening. I mean you  
8 could seal off the CHOP zone, you know, a block or two out  
9 and prevent people from using it as a tourist attraction.

10 Q. And would that have been reasonable to do?

11 A. Well, I don't -- I don't know because I don't  
12 know all the details, but I'm just offering that up as a  
13 hypothetical.

14 Q. You don't know whether that would have been  
15 reasonable, or you don't have an opinion as to whether that  
16 would have been a reasonable course of action?

17 A. Did somebody say something, other than  
18 Mr. Cramer?

19 MR. WEAVER: That was somebody in the background  
20 for me.

21 A. Oh, I'm sorry.

22 I don't have enough contextual details.

23 BY MR. CRAMER:

24 Q. Okay. On the night of June 11th -- strike that.  
25 On June 11th are you aware of the attempt by the police



JON M. SHANE PhD  
8/11/2022

Page 126

1 A. Not that I can think of, no.

2 Q. And you're not an expert in -- in the Seattle  
3 City Charter; correct?

4 A. I mean insofar as the plain language describes  
5 how the mayor carries out his or her duties, how the police  
6 department carries out its responsibilities. As a matter  
7 of policy, I can certainly opine on that and I'm familiar  
8 with how city charters affect police policy. For example,  
9 the SPD manual, what they -- I think they called it the  
10 General Orders Manual -- I'm not sure what the exact  
11 terminology is -- but that manual references back to the  
12 city charter.

13 Q. And point that out to me back in Exhibit 163 that  
14 you're talking about, the manual that you're referring to.

15 A. It's not listed in my documents; I'm just  
16 generalizing about -- you asked me what I know about city  
17 charters and police practices.

18 Q. And I'm asking what's the policy manual that  
19 you're referring to.

20 A. The Seattle Police Department -- I don't know the  
21 exact term. I think it's called the Seattle Police  
22 Department Manual or the Seattle Police Department General  
23 Orders Manual, something to that effect.

24 Q. Is that something you considered in developing  
25 your opinions for the case today?

JON M. SHANE PhD  
8/11/2022

Page 136

1 Q. But do you know whether the existence of COVID  
2 altered the SPD's response protocols at all one way or the  
3 other?

4 A. I don't know.

5 Q. Okay. Do you know whether COVID altered response  
6 protocols for police departments generally around the  
7 country?

8 A. I mean I think it's a qualified answer. It  
9 depends. Some police departments adopted differential  
10 response when they didn't have it before. So -- but I  
11 don't know of any police departments that didn't go to any  
12 crimes in progress or things like that, or answer violent  
13 calls for service.

14 Q. Are you aware of any calls for crimes in progress  
15 of violent crimes originating from the red zone in June  
16 2020 that SPD did not respond to in person?

17 A. Well, I think on the next page, on 17 you talk a  
18 little bit about that. Let me read it into the record. It  
19 says: None of the following crimes constituted crimes that  
20 the SPD would physically respond to in the red zone while  
21 this policy was in place: "Rape, assault that did not  
22 endanger a significant number of people, kidnapping,  
23 discharge of a firearm not resulting in injuries, property  
24 destruction that did not put many people's lives in danger,  
25 fires that did not endanger a significant number of lives,

JON M. SHANE PhD  
8/11/2022

Page 137

1 and a large disagreement involving individuals carrying  
2 rifles but not firing them."

3 Q. So my question is slightly different. Are you  
4 aware of any calls for those things that did not get  
5 responded to in person?

6 A. Oh, whether or not these resulted in -- these are  
7 the crimes. Are you talking about the calls that may have  
8 come in regarding these things?

9 Q. Yeah, the calls that may have come in.

10 A. No.

11 Q. Okay.

12 A. I shouldn't say no. I should say I don't recall.  
13 It's a better answer.

14 Q. And as part of the red zone policy -- or I'm  
15 sorry, the red zone guidance that was issued by Chief  
16 Mahaffey, it still required that calls originating from  
17 within the red zone be documented; is that right?

18 A. Well, they would be documented anyway. If  
19 somebody called, there would be a record of that call  
20 coming into the police department. The phone call would be  
21 recorded. You know, the dispatcher was making what we call  
22 a CAD entry, computer-aided dispatch entry. There would be  
23 a record of that.

24 Q. Sure. But I guess what I'm saying is that the  
25 policy or the guidance directs officers to continue that

JON M. SHANE PhD  
8/11/2022

Page 138

1 process; right?

2 A. Yes. I don't think the Seattle Police Department  
3 did not record the calls for service.

4 Q. Okay. And -- and the policy also provided for  
5 personnel trying to coordinate contact if the complainant  
6 wanted it outside the red zone -- right? -- outside the red  
7 zone boundary?

8 A. That the police officers were -- I think at one  
9 point there was a four-officer response. They would meet  
10 with a sergeant to determine whether or not they were going  
11 to go into the red zone, or into the CHOP zone.

12 Q. So I guess what I'm talking about is the  
13 italicized portion there that a call comes in from the red  
14 zone, personnel was directed to try to coordinate officer  
15 contact outside the red zone boundary; right?

16 A. Okay, yes.

17 Q. And that area was a couple blocks wide; is that  
18 right?

19 A. I -- I don't know. I don't know what the  
20 physical boundaries were.

21 Q. Okay. And do you know -- do you know the reason  
22 why the communications staff personnel was attempting --  
23 should attempt to coordinate officer contact outside the  
24 boundary?

25 A. I don't recall specifically, but I think it was

JON M. SHANE PhD  
8/11/2022

Page 139

1 to -- to avoid -- to avoid inflaming tensions.

2 Q. Is that an unreasonable policy?

3 A. I think most definitely. I mean you're  
4 preventing people from going to the crime scene and seeing  
5 exactly what happened, denying some of the benefit of an  
6 adequate police response. That includes the response, EMS,  
7 canvassing the neighborhood for witnesses, victims,  
8 managing the crime scene, collecting evidence, all sorts of  
9 things. Once you leave that crime scene, there's all sorts  
10 of things that can happen.

11 Q. Would you agree that prioritizing life and safety  
12 is more important than preserving a crime scene; right?

13 A. Than preserving a crime scene, of course, yes.

14 Q. And that life and safety takes precedence over  
15 preserving property. Is that fair as well?

16 A. Yes, that's fair.

17 Q. Okay. And so if the police department determines  
18 that inflaming tensions poses a risk to life and safety,  
19 then that takes precedence over viewing a crime scene;  
20 correct?

21 A. Well, as long as you have some evidence that it's  
22 going to result in a safety issue. I don't recall seeing  
23 anything that dictated the course that there was going to  
24 be an imminent threat to anybody's life.

25 Q. And it's your opinion that they weren't allowed



JON M. SHANE PhD  
8/11/2022

Page 140

1 to take those things into account unless there's an  
2 imminent threat?

3 A. Well, yeah, you have to have some sort of  
4 imminent threat. I mean what else would you doing? You  
5 can't let people coerce your operations.

6 Q. Okay. So you can't prioritize life and safety  
7 over property preservation or crime scene preservation  
8 unless you are facing an imminent threat.

9 A. Unless you can point to some other indicia of --  
10 of risk. I mean just because someone's annoyed with your  
11 presence, that's not sufficient to keep you from carrying  
12 out your duties.

13 Q. And the ongoing existence of protesters who are  
14 hostile to the police in the area is -- is such an indicia  
15 of risk; right?

16 A. That's not sufficient to keep you from going to a  
17 crime scene to service somebody, no.

18 Q. Are you aware of the attempt that the police  
19 department made on June 20th to enter the red zone?

20 A. I don't recall specifically.

21 Q. And the force that they were met with when they  
22 attempted to do that?

23 A. I don't recall that specifically.

24 Q. And would it have been reasonable for --

25 A. Were they responding to a call for service?



JON M. SHANE PhD  
8/11/2022

Page 165

1 department to not -- to drop certain kind of charges --  
2 yeah?

3 A. No.

4 Q. Not aimed at a specific person, but just at a  
5 policy level, this type of crime?

6 A. We're not going to enforce the laws on marijuana.

7 Q. Sure, as an example.

8 A. It would -- it would depend on what -- what  
9 authority the mayor has as a matter of state law.

10 Q. And did you analyze as part of coming up with  
11 your opinions what state law provides as the mayor's scope  
12 of authority?

13 A. No.

14 Q. Turning to the -- sorry, hold on -- your  
15 conclusion that -- or opinion that the City violated  
16 Article 6 regarding the maintenance of adequate police  
17 protection --

18 A. Where are you looking specifically?

19 Q. It is -- it's Exhibit 166, Section 1. Is that  
20 the section of the charter you believe the City violated?

21 A. Yes.

22 Q. And would you agree that whether the City's  
23 maintaining adequate police protection is a legal question?

24 A. What do you mean by a legal question?

25 Q. Well, it requires adequate police protection is a

JON M. SHANE PhD  
8/11/2022

Page 166

1 legal concept; correct?

2 A. I guess I'm getting hung up on the word "legal."  
3 I mean we -- when I say "we," I mean command staff members,  
4 chief of police, people like myself in the research field  
5 examine workload and determine whether or not there's  
6 adequate staffing in police departments all the time.

7 Q. And so in that context, what is -- what does  
8 adequate mean?

9 A. Adequate means sufficient to -- to handle your  
10 incoming calls for service, provide reasonable response to  
11 911 calls, to investigate a follow-up.

12 Q. And what does police protection mean?

13 A. Means to provide generalized police service to --  
14 to the community. Unless there, of course, is a special  
15 relationship that has been defined where a particular  
16 individual is owed a duty, but generally police protection  
17 extends to the community in general -- you call, we come,  
18 we have a -- we're entitled to -- when I say "we," the  
19 public is entitled to a police response for protection  
20 purposes.

21 Q. It's not crime prevention, though; correct?  
22 It's -- incorporates responses?

23 A. Well, let me just make sure I'm clear. Are you  
24 saying that adequate police protection is exclusive of  
25 responding to calls for service?

JON M. SHANE PhD  
8/11/2022

Page 175

1 (Recess taken.)

2 THE VIDEOGRAPHER: The time is 3:52 p.m. We are  
3 back on the record.

4 BY MR. CRAMER:

5 Q. I want to ask you about Footnote 48.

6 A. Okay.

7 Q. And the first thing I want to ask you is your  
8 reference to Title 10 of the Seattle Municipal Code. I  
9 just don't understand why -- why that is relevant to your  
10 analysis, and I'm asking you to explain it.

11 A. All right, so let me just read it, please.

12 Q. And I can be more specific once you're done.

13 A. So what I'm suggesting here based on the Seattle  
14 Municipal Code is that the mayor denied the benefit of the  
15 Seattle Police Department in and around the East Precinct  
16 and the CHOP zone, and it says here in Title 10 "to provide  
17 or promote the health, safety, and welfare of the general  
18 public and not to create or otherwise establish or  
19 designate any particular class or group of persons."  
20 So what I'm referring to is those in the CHOP zone who will  
21 or should be especially protected or benefit.

22 So my reading of that language is that when they  
23 failed to take action and dismantle the CHOP zone and  
24 prevent it from being erected and then failing to respond  
25 to calls within the CHOP zone, that these people benefited

JON M. SHANE PhD  
8/11/2022

Page 176

1 from that.

2 Q. Is this a third basis of potential --

3 (Technical issues.)

4 THE VIDEOGRAPHER: The time is 3:54 p.m. We are  
5 off the record.

6 (Discussion held off the record.)

7 THE VIDEOGRAPHER: The time is 3:55 p.m. We are  
8 back on the record.

9 BY MR. CRAMER:

10 Q. My question is: What's the relationship between  
11 Title 10 and your -- and then the charter provisions that  
12 you say are violated, or is a different basis of liability  
13 that you are contending?

14 A. Well, this is the Seattle Municipal Code that I'm  
15 referring to here.

16 Q. Okay. Would you agree with me that what is  
17 required by Title 10 requires -- is a question of law and  
18 what is required -- what it means to protect and preserve  
19 public space, health, safety, welfare, et cetera, are legal  
20 terms of art?

21 A. No, not necessarily. I mean I think these are  
22 things that police chiefs and command staff members do all  
23 the time.

24 Q. Is this a third thing, a third statutory  
25 provision that you contend that the City violated, or is

JON M. SHANE PhD  
8/11/2022

Page 177

1 this a -- something else?

2 A. I'm not sure what you mean by "third thing."

3 Q. Well, you say that you believe that the City  
4 acted inconsistent with charter Article 5; right?

5 A. Yes.

6 Q. And Charter Article 6. That's two things; right?

7 A. Yes.

8 Q. And now we've inserted Title 10 in a footnote.

9 I'm trying to gather whether that's a third statutory  
10 provision you think that the City has violated or if you're  
11 just providing some sort of context for the other claims.

12 A. No, I think that the police department and the  
13 City did violate this provision, yes. If you're asking me  
14 if it was stated up front, the answer is no, but I mean I  
15 don't want you to think that I didn't consider this either.

16 Q. Okay. Now, below that, further down, you say --  
17 you cite to the Office of Police Accountability's Case  
18 Closed Summary.

19 A. Yes.

20 Q. And you write: "It is undisputed that the  
21 CHOP/CHAZ area did not for a period of time receive regular  
22 police services. This undoubtedly resulted in detrimental  
23 effects to residents of the immediate area and businesses  
24 in the vicinity."

25 Do you see that?



JON M. SHANE PhD  
8/11/2022

Page 178

1 A. Yes.

2 Q. And it's your conclusion that that finding means  
3 that the City did not provide adequate police protection;  
4 right?

5 A. Yes, certainly, and it's also -- it's also  
6 contrary to the provision we were just talking about here  
7 in Title 10.

8 Q. And the Office of Police Accountability analyzed  
9 this same exact charter provision and determined that the  
10 City and police department did not violate the charter  
11 provision requiring the maintenance of adequate police  
12 protection; right?

13 A. I don't know how they arrived at that. That's  
14 not my reading of the material, but you are correct in the  
15 outcome, yes.

16 Q. And they did that in the very next sentence from  
17 the one that you quote here; is that right?

18 A. Yeah, I think -- well, I can't say for sure if  
19 it's the next sentence, but -- okay.

20 Q. Okay. And they came to that conclusion after  
21 interviewing a number of witnesses; right?

22 A. They did interview people, yes.

23 Q. And reviewing documentary evidence like text  
24 messages and e-mails; right?

25 A. Yes.



JON M. SHANE PhD  
8/11/2022

Page 179

1 Q. And interviewing community members; right?

2 A. Yes.

3 Q. And interviewing other City officials; right?

4 A. Yes.

5 Q. Analyzing state law and policies applicable to  
6 the -- to SPD; right?

7 A. I don't remember if there was any state law  
8 involved.

9 Q. Okay. And you didn't review anything other than  
10 the materials that were provided in Exhibit 163; right?

11 A. Oh, that's the list of materials?

12 Q. Yeah, that's the list of materials.

13 A. Yes, that's correct.

14 Q. And -- and in fact, the OPA recommended that  
15 these allegations were being not sustained because they  
16 were unfounded; is that right?

17 A. I -- I don't know if the disposition was  
18 unfounded or not sustained.

19 Q. But it would be in the OPA report. That's right?

20 A. The findings would be, correct. The disposition  
21 would be also.

22 Q. I'm going to have a question for you on the next  
23 page, Page 20.

24 A. Okay.

25 Q. So that in the middle of that paragraph you

JON M. SHANE PhD  
8/11/2022

Page 180

1 write: "Further, a decision to withdraw from a particular  
2 conflict to preserve officer safety must be based on an  
3 imminent threat of officer harm and is only reasonable if  
4 in the totality of the circumstances indicate such a  
5 threat." Do you see that?

6 A. No, where are you? Are you in the footnote?

7 Q. No, on Page 20, first full paragraph, starting  
8 with "Further."

9 A. Okay. Let me read from the beginning to see what  
10 context -- okay.

11 Q. And it's that sentence that starts "Further," and  
12 again, I'll let you just read it to yourself.

13 A. Okay.

14 Q. Okay. So "withdrawal from a particular conflict  
15 to preserve officer safety" -- that's a form of  
16 deescalation; right?

17 A. Tactical withdrawal is, yes.

18 Q. And just withdrawal generally is a form of  
19 deescalation; right?

20 A. No, no, no. Let's clarify those two things  
21 because when you use the word to withdraw, in the policing  
22 world, if you withdraw from an area, you're withdrawing --  
23 or a situation -- it depends on how we're using it -- but  
24 if you withdraw, you have no intent to go back, you have no  
25 intent to press forward, you have no intent to take any

JON M. SHANE PhD  
8/11/2022

Page 181

1 action.

2 If you are engaging in what's called tactical  
3 withdrawal, you are withdrawing for a limited amount of  
4 time for a limited purpose to be able to regroup and to  
5 press forward to recapture the situation.

6 So it depends. If you're telling me that you're  
7 withdrawing, that means you're leaving. That's it, that's  
8 the end of the situation. You're out, you're not coming  
9 back, you have no plans to press forward. If you're  
10 talking about tactical withdrawal, taking a step back to  
11 deescalate, to regroup, and then to press forward.

12 Q. Okay. So with that in mind, it's your opinion  
13 that only withdrawal from a particular conflict if -- if  
14 it's based on an imminent threat of officer harm? You  
15 can't withdraw prior to the situation escalating to that  
16 level?

17 MR. WEAVER: Objection, incomplete hypothetical.

18 A. Yeah, so it's context specific. And I guess what  
19 I'm saying here is that, if a police officer is confronted  
20 with someone who is presenting an imminent threat, it would  
21 not be unreasonable for them to tactically withdraw.

22 BY MR. CRAMER:

23 Q. Wait, you just said tactically withdraw, but in  
24 this it says withdraw, so which is your opinion?

25 A. Well, if you --

JON M. SHANE PhD  
8/11/2022

Page 182

1 Q. -- clarify that they're different things.

2 A. Yes, because if you look at the opening sentence,  
3 it says: "It is correct in a general sense that in any  
4 particular tactical situation," so that's what I'm -- I'm  
5 talking about tactical withdrawal.

6 Q. Okay.

7 A. So if you're confronting someone who's presenting  
8 an imminent threat -- like let's say somebody's holding a  
9 hostage -- it would not be improper or unreasonable, I  
10 guess is the better way of saying -- it would not be  
11 unreasonable to withdraw as a matter of tactical  
12 consideration and hold the scene and summon additional  
13 resources.

14 Q. But the situation needs to rise to an imminent  
15 threat before that decision is reasonable?

16 A. Because you're not going to withdraw to allow  
17 somebody to coerce you into doing something or -- or to  
18 take -- or to avoid taking action.

19 Q. I'm just asking is it reasonable to have a  
20 tactical withdrawal from a situation that does not present  
21 an imminent threat of officer harm?

22 A. Again, context specific, but what are you at that  
23 moment? Are you being confronted by someone who's trying  
24 to intimidate you from acting?

25 Q. Is it unreasonable to tactically withdraw from a

JON M. SHANE PhD  
8/11/2022

Page 183

1 situation that does not involve an imminent threat of  
2 officer harm?

3 A. It's context specific. I mean we would have to  
4 define the context in which it occurs. Generally, no. If  
5 you're confronted with someone who's trying to coerce and  
6 intimidate you, you don't withdraw, you stand your ground,  
7 you press forward to achieve a lawful objective. If that  
8 person is presenting an imminent threat and the better  
9 course of action is for you to back down, such as a hostage  
10 situation, that -- that's prudent. Not to withdraw  
11 completely from the scene, but to regroup and to press  
12 forward.

13 Q. So you cannot preemptively withdraw to make sure  
14 that you don't actually get into a situation where you're  
15 facing imminent threat, if you're a reasonable police  
16 officer?

17 A. Well, I mean it's context specific. You'd have  
18 to know exactly what was occurring at that moment. I mean  
19 I can't think of a situation where a police officer comes  
20 to the scene, he's not faced with an imminent threat, and  
21 then withdraws for no reason.

22 Q. So taking a look at the list that starts at the  
23 bottom of Page 20, this is a list of the totality of the  
24 circumstances that you would think that Chief Mahaffey  
25 should have taken into account on June 8th. Is that fair?



JON M. SHANE PhD  
8/11/2022

Page 211

1 A. What's the modification?

2 BY MR. CRAMER:

3 Q. Let's say they require additional support, more  
4 cars to come than just the one.

5 MR. WEAVER: Objection.

6 A. Well, the answer is it depends. A history of --  
7 history of false calls doesn't mean you're not going to the  
8 next shots fired call, even though that might be a -- that  
9 might be a false call, because you don't know if the next  
10 one is the real one or not.

11 BY MR. CRAMER:

12 Q. And you're not going to modify your protocols for  
13 responding?

14 A. Well, as I was going to say, if your modification  
15 is we're going to send two cars, two cars with four  
16 officers, but there's not a second car available, you're  
17 going to have to send a single car with two officers.

18 Q. What about if it's a housing development with a  
19 history of conflict with the police so that every time  
20 you've gone there in the past is, you know, some escalation  
21 has occurred?

22 MR. WEAVER: Same objection.

23 A. The answer is the same thing: It depends on what  
24 it is that you're responding for. You're talking about  
25 something that we've had -- experienced in Newark. We had



JON M. SHANE PhD  
8/11/2022

Page 212

1 modified responses to public housing projects, and if  
2 somebody reported a bicycle stolen, we might take the  
3 report over the phone, we might not send police officers  
4 there; but if somebody reported shots fired or that  
5 somebody was shot on the 18th floor of a housing project  
6 and we couldn't muster two two-officer cars, meaning four  
7 officers, we would still send two officers knowing full  
8 well that there's been a history of false calls and  
9 conflict with the police, because you don't know if the  
10 next one is real or not.

11 BY MR. CRAMER:

12 Q. But is that something you -- you know, you would  
13 take into account in formulating the response, is the  
14 history of what happened previously with calls from that  
15 development in that area?

16 A. Well, the 911 response would -- I just want to  
17 make sure I'm clear. Are you saying that the history of  
18 fictitious calls from a given location --

19 Q. Yeah, the --

20 A. -- modified response?

21 Q. Yes.

22 A. Yes.

23 Q. Okay. Let's go off the record for a couple  
24 minutes while I look at my notes.

25 THE VIDEOGRAPHER: The time is 5:07 p.m. We are

JON M. SHANE PhD  
8/11/2022

Page 215

REPORTER'S CERTIFICATE

I, Mindy L. Suurs, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the foregoing testimony of JON M. SHANE, Ph.D. was given before me at the time and place stated therein and thereafter was transcribed under my direction;

That the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision to the best of my ability;

That the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

DATE: August 17, 2022

*Mindy L. Suurs*

Mindy L. Suurs  
Certified Court Reporter #2195



# **EXHIBIT 2**

ERIC L PIZA, PhD  
8/16/2022

Page 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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HUNTERS CAPITAL, LLC, et al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 20-cv-00983-TSZ
	)	
CITY OF SEATTLE,	)	
	)	
Defendant.	)	

---

Zoom Video Deposition Upon Oral Examination  
of  
ERIC L. PIZA, Ph.D.

---

DATE: Tuesday, August 16, 2022

REPORTED BY: Mindy L. Suurs, CSR No. 2195

ERIC L PIZA, PhD  
8/16/2022

Page 31

1 date is escaping me.

2 Q. Is that before you put together the research  
3 design for the study?

4 A. For this study, yes.

5 MR. WEAVER: I think there may need to be some  
6 clarification about what you're asking, Erica. I mean I  
7 will submit that we did not retain Dr. Piza in this case  
8 until April of this year.

9 MS. IVERSON: Until April of 2021?

10 MR. WEAVER: 2022.

11 MS. IVERSON: 2022. It's my own timeline  
12 problems.

13 Q. And so you were not retained in this case until  
14 April 2022. Were you retained at all by the plaintiffs  
15 before that?

16 A. No.

17 Q. Okay. Were you in contact with plaintiff's  
18 counsel in 2020?

19 A. No.

20 Q. Were you in --

21 A. You're talking about the plaintiffs for the  
22 Seattle case, then no.

23 Q. Were you in contact with plaintiffs for -- in any  
24 other case before --

25 A. Not in 2022. In 2020 I was obviously in contact



ERIC L PIZA, PhD  
8/16/2022

Page 32

1 with the counsel for the plaintiff that asked me to write  
2 the report for that case in 2020.

3 Q. Okay. You were retained -- sorry, so were you --  
4 when you say "in 2020," that case, are you talking about  
5 the North Carolina case?

6 A. Yes.

7 Q. Okay.

8 A. Yeah, the plaintiffs for Seattle I had not had  
9 any prior contact with prior to March or April of 2022.

10 Q. Okay. I see. So you were not in contact with  
11 plaintiffs in this case or Plaintiffs' counsel in this case  
12 until March or April of 2022?

13 A. That is correct.

14 Q. Okay. So you and I guess Mr. -- or Dr. Connealy  
15 designed the research paper or the study, the research  
16 paper that's the subject of your expert report in this  
17 case -- you designed that in 2020 without any communication  
18 or contact with any of the plaintiffs or counsel?

19 A. We designed it in 2021 without any prior contact  
20 with the counsel.

21 Q. Okay. As of 2021, what was your familiarity with  
22 Seattle -- well, let's start with that, with Seattle?

23 A. I have visited Seattle on a couple of occasions  
24 over time, probably around 10 years ago now. I went to a  
25 conference -- name of the town escapes me, but right east

ERIC L PIZA, PhD  
8/16/2022

Page 39

1 any other opinions in this case?

2 A. No.

3 Q. Turning to the research paper and the design of  
4 the study, who had -- sorry, let me back up for a second.

5 This is a paper that you coauthored with  
6 Dr. Connealy; correct?

7 A. Yes.

8 Q. And as you mentioned earlier, he was one of your  
9 Ph.D. students at John Jay?

10 A. Yes.

11 Q. And you were his Ph.D. advisor?

12 A. Yes.

13 Q. Was this study part of Dr. Connealy's  
14 dissertation research?

15 A. No.

16 Q. And who had the idea to conduct this study -- you  
17 or Dr. Connealy?

18 A. Me.

19 Q. And who was primarily responsible for designing  
20 the research -- or designing the quasi-experiment?

21 A. Me.

22 Q. And who decided to use the synthetic control  
23 matching method?

24 A. Me.

25 Q. Did you consider applying any other data analysis

ERIC L PIZA, PhD  
8/16/2022

Page 40

1 technique in this study?

2 A. No, because all other quasi-experimental  
3 techniques wouldn't have even approached the level needed  
4 for us to develop a sound control group. I kind of vaguely  
5 mentioned propensity score matching before. Statisticians  
6 have highlighted some issues with that technique, so that  
7 wasn't an option, and the only other option was either just  
8 measuring crime in the CHOP area and ignoring the rest of  
9 the city, which is inappropriate -- you can't even pretend  
10 to say anything about causal inference if that's what  
11 you're doing -- or just randomly selecting like another  
12 neighborhood in Seattle as the control group, and we also  
13 felt that that was inappropriate because, again, there are  
14 no statistical controls if you do that to have the control  
15 group at least resemble the intervention area.

16 So that's the long answer just to say no, we did  
17 not consider any other techniques because no other  
18 techniques were feasible in this case.

19 Q. And I think you said "we," and it sounds like you  
20 considered some other techniques and then rejected them.  
21 Did you discuss that with Dr. Connealy?

22 A. No, no, I mean by the time -- by the time I  
23 approached Dr. Connealy asking if he wanted a partner in  
24 the study, I already did some basic research on the  
25 situation in Seattle. I combed through the Seattle open

ERIC L PIZA, PhD  
8/16/2022

Page 41

1 data web portal just to make sure the necessary data was  
2 there to do the analysis. I kind of thought through the  
3 general research design. And then after -- only after, you  
4 know, being sure that this was a study that was actually  
5 possible did I reach out to Dr. Connealy.

6 Q. And after you reached out to him, did you -- the  
7 two of you discuss the research design at all, or any of  
8 the background research that you conducted prior to  
9 reaching out to him?

10 A. So the first time Nate -- Dr. Connealy and myself  
11 applied this technique, it was on an evaluation of the  
12 legalization of recreational marijuana in Denver. On that  
13 study, Dr. Connealy in his role as a Ph.D. student at the  
14 time was the lead author. So we had that kind of  
15 technique -- so how is this going to be different or  
16 similar to what we did in Denver, and if -- you know, if  
17 this is important enough -- not sure, but that study of  
18 Denver was published in a journal called Justice Evaluation  
19 Journal a couple of years ago.

20 Q. In terms of the design for this study in  
21 particular, did Dr. Connealy raise any concerns about the  
22 research design?

23 A. No.

24 Q. And would you say you went forward and applied  
25 the design that you had researched independently and come

ERIC L PIZA, PhD  
8/16/2022

Page 42

1 up with independently before reaching out to him?

2 A. Yes.

3 Q. In terms of the data gathering, who was  
4 responsible for that?

5 A. So Dr. Connealy and I, just to save time, kind of  
6 split responsibilities for that and just kind of explained  
7 why time was of a factor. What really motivated the  
8 story -- so just a brief explanation about why time was a  
9 factor. I mentioned before that I had a general interest  
10 in knowing more about the CHOP and specifically the CHOP  
11 occupation's impact on crime, but then I saw in the summer  
12 of 2021 the Journal of Criminology and Public Policy put  
13 out a call for papers that related in some way to the  
14 aftermath of the George Floyd killing. I found it fairly  
15 late, so we didn't have a tremendous amount of time to get  
16 the data together in order to do the analysis, so to save  
17 time, Dr. Connealy and I shared responsibilities for  
18 downloading, cleaning, and preparing the data set that we  
19 used for the statistical evaluation.

20 Q. Was anyone else involved in that process other  
21 than you and Dr. Connealy?

22 A. No.

23 Q. And then I believe in the paper you go over ten  
24 different covariants that you selected to be able to, I  
25 guess, apply the microsynthetic control matching technique;



ERIC L PIZA, PhD  
8/16/2022

Page 43

1 is that right?

2 A. Yes.

3 Q. And who selected those ten covariants?

4 A. I guess myself. We largely took them from  
5 another evaluation that Dr. Connealy, myself, and a couple  
6 of other colleagues conducted of a substation in Newark,  
7 New Jersey, that was published in Criminology and Public  
8 Policy in 2020. So we essentially borrowed the list from  
9 that study that we had used previously for the Seattle  
10 example.

11 And in that study we selected those matching  
12 covariants just based on what prior policing research that  
13 had used similar matching designs had also used. So this  
14 was very much informed by prior research on the topic.

15 Q. Did you depart at all from the ten covariants  
16 used in the prior substation research?

17 A. A little bit. So to my knowledge, the substation  
18 study, we did not have the concentrated disadvantage index  
19 in there only because the substation was in a 100 percent  
20 commercial area, so there was no residential population to  
21 speak of. Concentrated disadvantage is based upon  
22 residential demographics. So we added that in only because  
23 commercial area obviously doesn't allow for that variable  
24 to be used.

25 Q. Any other differences?

ERIC L PIZA, PhD  
8/16/2022

Page 44

1 A. No.

2 Q. And then in terms of the data analysis itself,  
3 who was primarily responsible for analyzing the data?

4 A. I'd say I was primarily responsible. So I -- I  
5 wrote up the original code in the R package and ran the  
6 findings and then, when it was time to revise the article,  
7 Dr. Connealy just went in and just added some more  
8 description to the code so that when we made it publicly  
9 available, anyone who downloaded the code could actually  
10 make sense of, you know, computer science programming  
11 jargon. So I would say I had primary responsibility.

12 Q. And anyone else involved in the data analysis  
13 process besides the two of you? Any other -- any research  
14 interns, anything like that?

15 A. No, not for this project.

16 I do want to add -- maybe you want to ask this  
17 later, but I do want to acknowledge that homicide is not  
18 available on the Seattle data portal, so I had to put in a  
19 request for that data directly to the Seattle Police  
20 Department, and they ultimately provided us the data.

21 Q. They provided you the data in time for you to  
22 include it in your study?

23 A. Not initiallity; right? So when we first  
24 submitted it, we had to do the analysis without homicide  
25 only because I hadn't heard back from the Seattle Police

ERIC L PIZA, PhD  
8/16/2022

Page 45

1 Department in time. During the revision process then we  
2 were able to use that data because they had gotten it to me  
3 in time for that.

4 Q. The revision process that you undertook with the  
5 journal?

6 A. Yes.

7 Q. And the homicide data -- is that part of the data  
8 that's included in your -- on your website?

9 A. Yes.

10 Q. So you set out three different intervention  
11 areas; right?

12 A. Yes.

13 Q. Or operationalized three different intervention  
14 areas maybe? Is that the better word?

15 A. I'm not going to make someone say operationalized  
16 outside of a classroom, so you could say set up if you  
17 want.

18 Q. If I use the phrase "treatment area," do you  
19 understand that to be interchangeable with "intervention  
20 area"?

21 A. Yes.

22 Q. And who chose the three intervention areas?

23 A. I did in my kind of reading of the  
24 Seattle-specific media that I discussed before where I  
25 originally learned about CHOP, a lot of them included maps

ERIC L PIZA, PhD  
8/16/2022

Page 46

1 that identified the same area as the occupation zone, so  
2 that's essentially -- if you have a color version in front  
3 of you, on Page 43, that's what the red rectangle is. But  
4 with any policing, just to stick with the word  
5 "treatment" -- right? -- it's important not to just look at  
6 the direct effects, it's important to look at areas that  
7 are close by that may also still experience those types of  
8 effects, so that's where the two-block -- that's the reason  
9 why I selected the two-block area. And since this was kind  
10 of a precinct-specific thing, also thought it made sense  
11 to -- and given some of the -- some of the detail that I  
12 got from a podcast episode that Carmen Best was on where  
13 she kind of also suggested that the CHOP occupation may  
14 have had East Precinct-wide implications in terms of the  
15 service area of the East Precinct. So after hearing her  
16 say that, I figured maybe it is a good idea to measure  
17 effects at that level as well. So that was the  
18 justification for the three different treatment areas.

19 Q. For the CHOP zone area, the area, as you said,  
20 that's in red on Page 43 of the paper, do you remember  
21 which specific media reports you pulled that from?

22 A. The one that I cited in my expert report was BBC,  
23 so that was the one that was kind of most clearly, but a  
24 lot of articles -- if my memory serves you correctly, a lot  
25 of media articles that came out after the BBC report also

ERIC L PIZA, PhD  
8/16/2022

Page 47

1 just kind of linked to that same match, so there did seem  
2 to be a general consistency with what everyone considered  
3 to be the CHOP area.

4 Q. Did you look at anything other than media reports  
5 to generate the CHOP area?

6 A. No, only because I just didn't have access to  
7 anything else.

8 Q. And you said I think you were designing the study  
9 in 2021; is that right?

10 A. Yes.

11 Q. Did you look or find at all the plaintiff's  
12 complaint that was filed in this case in 2020?

13 A. No.

14 Q. And since your retention in this case, have you  
15 looked at the plaintiff's complaint?

16 A. Yes. That was the first document that was  
17 provided to me when I was retained, so I read it just to  
18 get a sense of what the case was all about.

19 Q. Were you provided with the class certification  
20 briefing?

21 A. I don't know.

22 Q. Were you provided with any legal briefs that  
23 you're aware of?

24 A. I don't believe so.

25 Q. Was the Complaint the only litigation document



ERIC L PIZA, PhD  
8/16/2022

Page 50

1 A. Yes.

2 Q. Okay. And when you say "confined boundaries,"  
3 are you aware -- are you talking about physical  
4 confined confines, or are you speaking -- is that  
5 metaphorically the confined boundary?

6 A. This is kind of a geography term, or at least a  
7 geographic information term. So within the confines means  
8 that we're only looking at the street segments that share  
9 the red outline are within it.

10 That's an important distinction for researchers  
11 only because the default process in the GIS software that I  
12 used to make that map is to just count everything that  
13 intersects each other as part of the same thing; right? So  
14 that's not what we did; we didn't look at the street  
15 segments that touched the red line, we looked at the street  
16 segments that were either identical to the outline or  
17 firmly in the red boundary. So that's all confined  
18 boundaries means in this context.

19 Q. Got it, okay. So a technical term not related to  
20 the existence or nonexistence of physical barriers or  
21 boundaries?

22 A. Correct, correct.

23 Q. And then I think you said you included the  
24 two-block radius outside of the CHOP zone as the second  
25 intervention area?

ERIC L PIZA, PhD  
8/16/2022

Page 51

1 A. Yes, yes.

2 Q. And the reason for that was to see -- can you  
3 explain again just the reason for doing that?

4 A. It's just -- it's common technique in play space  
5 policing research to not only look at the target area, but  
6 to look at areas that are outside of the target area but  
7 very close to the target area because any policing effect  
8 or, in this example, depolicing effects may have wider  
9 effects than just where the activity actually took place.

10 And also, to be fair, too, the two-block area  
11 also protects against the possibility -- and again, I'm  
12 pretty confident that the red square is accurate, but even  
13 in the event if the red square is off by a block or two,  
14 looking at the two-block area kind of protects any validity  
15 concerns from that as well.

16 Q. And then can you just explain again the rationale  
17 for using the entire East Precinct response area as the  
18 third intervention area?

19 A. Yeah, certainly. So from my understanding from  
20 hearing Carmen Best's description of her side of the events  
21 on a podcast episode, she said that since the Seattle  
22 Police Department did not have the capacity to have roll  
23 call out of the precinct or to have officers kind of  
24 generally patrolling the immediate area of CHOP, that they  
25 had to be -- roll call had to be held elsewhere, they had

ERIC L PIZA, PhD  
8/16/2022

Page 52

1 to be deployed from elsewhere, and she said that that  
2 negatively impacted the Seattle Police Department's ability  
3 to provide police service across the whole service area,  
4 not just in the confines of CHOP.

5 So again, when I heard that, I figured, you know,  
6 it's just adding a third target area, so it's probably  
7 something we may as well take a swing at in the analysis.

8 Q. You mentioned the podcast. Is that cited in your  
9 report?

10 A. Yes, it's cited as Ratcliffe 2021. So Jerry  
11 Ratcliffe is the podcast's host. He's also a professor at  
12 Temple University. So Ratcliffe 2021A, to be specific.

13 Q. And then on Page 44 of the report, so you talk  
14 about this -- something called the secondary microsynth  
15 model somewhere in the middle of the page there.

16 A. Yes.

17 Q. And can you just explain, hopefully in lay terms,  
18 what the secondary microsynth model is and what it does?

19 A. Certainly. As best I can, so the way the  
20 statistical analysis portion of microsynth works is through  
21 permutations that kind of mixes and matches intervention  
22 area start dates with crime levels just to ensure that the  
23 finding that you get isn't just due to like random chance  
24 that the control areas that were selected were maybe not  
25 the ideal. So the permutations are used to calculate the

ERIC L PIZA, PhD  
8/16/2022

Page 53

1 statistical analysis.

2 In instances where you have small number of  
3 target areas -- and I think this certainly classifies as an  
4 instance -- right? -- 36 street segments isn't a terribly  
5 large geography -- sometimes to maximize the matches, the  
6 microsynth method actually uses some of those permutations  
7 to identify the primary matching area.

8 So rather than just doing the matching area once  
9 and then using all -- we ran 999 additional permutations --  
10 rather than using all 999 for the statistical significance  
11 tests, it uses a couple of those to maximize the strength  
12 of the control group. And by "strength of control group,"  
13 I mean the similarity between the control group and the  
14 treated area.

15 Q. Okay. So the other -- when you're running this  
16 microsynth matching technique with the non-CHOP zone,  
17 you're running 999 permutations, but then with the CHOP  
18 zone it's fewer than that?

19 A. It's still 999 permutations, it's just that some  
20 of the permutations had the dual job of interpreting  
21 statistical significance and identifying the most  
22 appropriate weights for the control street segments. So  
23 that's a tradeoff there; right? So essentially if you have  
24 really small areas that you wanted to match, you don't get  
25 the benefit of all of the permutations for the statistical

ERIC L PIZA, PhD  
8/16/2022

Page 54

1 analysis.

2 Now, importantly, that means it's more difficult  
3 to find a statistically significant effect -- right? -- and  
4 we still found a statistically significant effect despite  
5 those model limitations.

6 Q. And you ran the secondary technique only for the  
7 CHOP zone?

8 A. Yes, because the other areas were able to be  
9 matched with the primary -- the primary algorithm because  
10 there were enough free segments in the two-block caption  
11 and the precinct; right? Those are larger areas.

12 Q. And then just moving to Page 46, and it's the  
13 last sentence of the first full paragraph --

14 A. Okay.

15 Q. -- where you say "Post hoc descriptive statistics  
16 were used to revisit and uncover potential trends in  
17 specific types of crime that may have drove the observed  
18 shift."

19 A. That overly, overly technical language is just  
20 pretty much just saying that we created the line graphs on  
21 Page 49, 50, and 51 so that we could kind of contextualize  
22 what the difference in crime across the treatment and  
23 control areas mean.

24 Because microsynth -- this technique is -- it's  
25 technically measuring differences between treatment and



ERIC L PIZA, PhD  
8/16/2022

Page 55

1 controls. Now, a difference can be an increase, it can  
2 being a decrease, crime can stay identical but still be  
3 different to a control area, so to kind of peel back the  
4 layers of the onion and get a little bit more context about  
5 what difference means in this analysis, we created those  
6 three figures: Figure 2, Figure 3, Figure 4.

7 Q. Okay. So the trends that you -- or potential  
8 trends that you name or you describe on Page 46 -- those  
9 are -- can be seen on pages 49, 50, 51?

10 A. Correct.

11 Q. All right. And then I know you talked about --  
12 you called it a sensitivity analysis that you ran.

13 A. Yes.

14 Q. And is part of that analysis -- was that in  
15 response to Dr. Lanfear's critiques?

16 A. It was, it was. So Dr. Lanfear made a few  
17 substantive recommendations; right? So one thing is he  
18 took contention with our use of all crime sites. While I  
19 disagree and I think we've laid out our rationale pretty  
20 well in the journal article about why it made sense to not  
21 cherry pick what crime sites to include in the evaluation,  
22 we re-ran the analysis -- I re-ran the analysis taking  
23 Dr. Lanfear's recommendation to remove fraud. That  
24 actually overall increased the size of the crime difference  
25 that we found.

ERIC L PIZA, PhD  
8/16/2022

Page 64

1 existing research on police protests than it is about  
2 anything that specifically happened in Seattle. I'm not  
3 going to pretend like I know anything about the  
4 on-the-ground decision-making in Seattle.

5 Q. That's fair. I guess I'm just trying to  
6 understand if your use of the term "uprising," if that's  
7 supposed to be synonymous with the CHOP or if it's  
8 referring to something else.

9 A. I think in this context we used "uprising" as a  
10 synonym for occupation.

11 Q. Okay. And would you consider the occupation to  
12 include ongoing protest activity?

13 A. I believe so. I think. Can you provide a little  
14 bit more detail in the question just so I'm clear?

15 Q. Well, I guess I'd start with just the term CHOP.  
16 Do you know what CHOP stands for?

17 A. Capitol Hill Occupation Protest?

18 Q. Occupation -- occupied -- sorry, it's not  
19 actually a quiz. Just trying to (inaudible.) But okay,  
20 yeah, so I think Capitol Hill Occupied Protest, I believe.

21 A. Okay.

22 Q. So do you understand the CHOP time period to have  
23 included protest activity?

24 A. My understanding and my reading of it is, while  
25 there may have been protest activity, the level of protest

ERIC L PIZA, PhD  
8/16/2022

Page 65

1 activity in CHOP after the abandoning of the East Precinct  
2 seemed to be what was, you know, the type of activity seen  
3 elsewhere that was being reported by the media.

4 To me, in my opinion, the defining characteristic  
5 of CHOP was the occupation component, and that's kind of  
6 why I prefer to use that word when I talk about the study  
7 is because, you know, what's clear is there were, you know,  
8 concrete policy decisions to allow people to set up tents  
9 in the park over there, there was concrete policy decisions  
10 to provide portable toilets so that people didn't have to  
11 leave the area if they didn't want to, concrete policy  
12 decisions to place -- pardon the pun -- concrete barriers  
13 around the area to make it more difficult for people not  
14 existing in the -- or not currently in the area to come in.

15 So to me, all of those characteristics is really  
16 when I'm referring to intervention effects, I'm really  
17 talking about the police decisions around all of that type  
18 of activity and not necessarily the protest activity.

19 Q. Okay. And when you say you think or you  
20 understand the level of protest activity in the CHOP to be  
21 the same as elsewhere, do you mean elsewhere like other  
22 cities or elsewhere in Seattle?

23 A. I think both. Elsewhere in other cities, you  
24 know, from media reports, and, again, all I had to go on  
25 was media reports. The protest activity, the intensity of

ERIC L PIZA, PhD  
8/16/2022

Page 69

1 policing over the last half century.

2 Q. Okay. So just to be clear on -- I understand  
3 the -- your difference or the different possible responses  
4 to this, but the data that you were working with didn't  
5 take into account protest activity in other areas of the  
6 city because it couldn't take that into account; right?

7 A. Yes, yes. We -- we matched on calls for  
8 service -- right? -- so you could make the argument that if  
9 there is a large protest, especially if it's one that  
10 wasn't previously planned or previously expected by the  
11 public, that may generate more calls to the police. So we  
12 do match on calls for service -- right? -- but we do not  
13 match on confirmed protest activity only because that data  
14 doesn't exist.

15 Q. Okay. So if that's the case, then is it also the  
16 case that we're not making sort of a true apples to apples  
17 comparison between the treatment group and the synthetic  
18 control groups?

19 A. Since we're using statistical matching --  
20 right? -- and we're using the most advanced statistical  
21 matching method that there is, I do contend that we are  
22 comparing apples to apples. It's just if we had direct  
23 measures of protest activity, we'd be comparing the same  
24 types of apples to apples; right? So maybe now we're  
25 comparing Golden Delicious with Honey Crisp apples --

ERIC L PIZA, PhD  
8/16/2022

Page 70

1 right? -- and if we had the protest's data, we'd be  
2 comparing Honey Crisp to Honey Crisp; right? But we're  
3 comparing apples to apples; right? I would argue pretty  
4 hard against this being an apples to oranges comparison;  
5 we're looking at the same fruit.

6 Q. Okay. So I guess we don't know if the  
7 treatment -- well, we don't know if the treatment area --  
8 let me withdraw that.

9 Given the inability to just aggregate the protest  
10 activity in the control and treatment areas, I guess how do  
11 we know whether it's protest activity that's causing this  
12 increase in crime or something else?

13 A. Because I still believe, while acknowledging that  
14 this -- there's a little uncertainty in this, because,  
15 again, the data doesn't exist, the CHOP area wasn't the  
16 only area that had large-scale protests in Seattle; right?  
17 And again, it's hard for you and I to debate that because  
18 the data just doesn't exist, but it's not like the CHOP  
19 area was the only area in Seattle that had possibility for  
20 protest; right?

21 George Floyd wasn't killed in Seattle --  
22 right? -- so it wasn't like protesters were flocking to the  
23 location of the crime and therefore that's really the only  
24 possible place where protests can happen. Protests can  
25 theoretically happen anywhere in Seattle; right? So an



ERIC L PIZA, PhD  
8/16/2022

Page 71

1 assumption we have to make, because the data doesn't exist,  
2 is that protest activity is at least somewhat present or at  
3 least could be present across the entirety of Seattle.

4 The only thing different here -- right? -- in the  
5 CHOP area is that nowhere else in Seattle, or anywhere else  
6 in the world for that matter, decided to completely remove  
7 their police responsibilities in a specified geography. No  
8 other place allowed protesters to occupy a location to this  
9 level.

10 So to me, that's the real intervention; right?  
11 Like the intervention or treatment or whatever word you  
12 want to use that we're looking at is not protest activity.  
13 I would contend to a certain extent it's not even looking  
14 at the abandoning of the police precinct. To me, it's the  
15 conscious decision to remove police presence and stop  
16 providing police services that is the defining  
17 characteristic of the CHOP area. So that's why I'm  
18 comfortable with the counterfactual condition that we were  
19 able to -- to concoct here because, again, it's the best  
20 possible thing we could do; right? It's the best possible  
21 thing we could do, and I don't think it's -- I don't think  
22 it takes a leap of faith to -- to see why that's an  
23 appropriate control condition in this quasi-experiment.

24 Q. Okay. So just -- so I think you said -- you used  
25 the term "possibility for protest." So the contention is

ERIC L PIZA, PhD  
8/16/2022

Page 72

1 not that there were protests happening in other areas of  
2 the city, but that it's theoretically possible that there  
3 were protests happening in other parts of the city?

4 A. Yes, since there's no existing data on protests,  
5 we have to -- like that's one assumption that I contend  
6 we're making in our statistical analysis.

7 Q. And --

8 A. One thing we did is we removed street segments,  
9 for example, that go over waterways -- right? -- because I  
10 would contend that the nature of protests that we're  
11 talking about can't happen on a waterway -- right? -- and  
12 it's likely not going to happen on a high traffic bridge,  
13 for example -- right? -- but we're talking about public  
14 places -- right? -- especially if you look at the nature of  
15 how the national protests were occurring. And national  
16 protests -- right? -- I get that we want to be  
17 Seattle-specific, but national protests is kind of the best  
18 we could do because the data doesn't exist. Protests were  
19 happening everywhere: They were happening outside of  
20 police precincts, they were happening in public parks,  
21 protests would spontaneously pop up. I know in Chicago  
22 this happened a couple times just around areas where  
23 officers were walking foot patrols -- right? -- just  
24 because there were police officers there.

25 So I disagree that the CHOP area was the only

ERIC L PIZA, PhD  
8/16/2022

Page 73

1 possible area in Seattle where protests of that magnitude  
2 were possible; right? To me, again, it's not -- the  
3 protest activity to me is not really what this analysis is  
4 looking at. It's looking at the policy decisions that  
5 followed the protests.

6 Q. Right, the policy decisions that were a response  
7 to the protest activity happening in the Capitol Hill area;  
8 right?

9 A. Yes.

10 Q. And there's no documented response to protest  
11 activity happening in other neighborhoods in Seattle?

12 MR. WEAVER: Objection, misstates facts.

13 A. Yes. And I think it's pretty clear -- even  
14 though the data doesn't exist, I think it's pretty clear  
15 that no other neighborhood in Seattle put up concrete  
16 barriers and told police officers to not respond to 911  
17 calls coming from that area other than CHOP.

18 So to me, again, this isn't a protest analysis.  
19 To me, this was a -- to use the academic term, this is a  
20 depolicing, watered down police abolition analysis --  
21 right? -- because I think that's -- it's -- that's really  
22 what happened in CHOP.

23 Q. And I guess so in your view, it doesn't matter  
24 why it happened; right?

25 A. I think "it doesn't matter" is too strong. Why

ERIC L PIZA, PhD  
8/16/2022

Page 74

1 those policy decisions were made to me are secondary. We  
2 would love to isolate them; right? We would have loved to  
3 include data that, you know, kind of links treatment and  
4 control areas based upon these annoying conditions, but the  
5 explicit decision to turn over a piece of a neighborhood to  
6 occupiers -- that's really what our evaluation was about.

7 Q. Right. I guess I'm just trying to understand how  
8 it is that the protest activity isn't a confounding  
9 variable in your experiment.

10 A. Because theoretically, other protests -- not  
11 theoretically -- other protests did happen in Seattle;  
12 right? I mean there's -- again, it's difficult for us to  
13 talk about magnitude or frequency, but other protests did  
14 happen in Seattle. Theoretically, at least -- right? --  
15 police could have responded to those protests by turning  
16 over the geography that the occupiers were in, but they  
17 didn't.

18 So while the lack of protest activity could be a  
19 confounding variable, I don't think that's a fatal flaw to  
20 the research design -- right? -- because the counterfactual  
21 does make sense. There was other protest activity.  
22 Theoretically, again, it could have gotten as bad as it did  
23 in CHOP, but it just didn't.

24 Q. Okay. So -- just so I -- because I feel like  
25 that's a slightly different answer, but maybe I'm just

ERIC L PIZA, PhD  
8/16/2022

Page 75

1 misunderstanding.

2 So is it that the counterfactual in this scenario  
3 is areas of the city where protests were happening but the  
4 police did not respond in the same way?

5 A. The counterfactual was police maintaining police  
6 responsibilities. All right? Because that's literally  
7 what police do in -- did in every other part of the city  
8 over 2020.

9 Q. Right, but not --

10 A. They --

11 Q. Sorry.

12 A. They dealt with protests -- right? -- and their  
13 response to protests were doing whatever they did to deal  
14 with the protesters but also maintaining their police  
15 presence, patrol, and response responsibilities.

16 Q. Okay. So the counterfactual is both responding  
17 to protests and --

18 A. I think the -- I'm sorry, go ahead. I thought  
19 you were done. I'm sorry.

20 Q. No, no, no, I'm just trying to parse the  
21 counterfactual. Is the counterfactual police response to  
22 protests in other parts of the city that didn't include  
23 withdrawing or drawing down police services?

24 A. Yeah, the counterfactual is business as usual  
25 policing.



ERIC L PIZA, PhD  
8/16/2022

Page 76

1 Q. Okay, business as usual policing. So not --

2 A. So continuing to patrol, continuing to respond to  
3 911 calls during an era or period of time where there were  
4 heightened risks for protests throughout the nation. The  
5 counterfactual is just doing what police always do.

6 Q. Okay. And the confounding variable of the  
7 protest activity is not a problem because the -- you're  
8 assuming that in the counterfactual scenario there were  
9 theoretically protests, or the theoretical possibility of  
10 protests?

11 A. Yes. And not just theoretical possibility; I  
12 think it's safe to say there were other protests, we just  
13 can't measure exactly where they happened.

14 Q. Okay. And there were other protests, but you're  
15 not aware of any specific protests?

16 A. No.

17 Q. Okay. Does any part of your experiment measure  
18 the SPD's response to protest activity before June 8th,  
19 2020?

20 A. Not directly. It would be captured within the  
21 general calls for service data that we had, but not  
22 directly because, again, there's -- you know, that data's  
23 not systematically collected. Because even within the  
24 calls for service -- right? -- response, a response to a  
25 protest event -- that could be any one of a variety of call

ERIC L PIZA, PhD  
8/16/2022

Page 77

1 types; right? It could be disorderly conditions; it could  
2 be, you know, someone falls during a protest and is  
3 injured, it's an injured person call; if it's an officer  
4 gets into a scuffle with someone, it's a call for backup;  
5 so there's no existing code, you know, within the calls for  
6 service data that would allow us to even approximate what  
7 the protest conditions are.

8 So again, I disagree that that means that we  
9 needed to not make a contribution to social science and  
10 public policy, but that's, you know, an issue that I  
11 acknowledge.

12 Q. Right. And just to be clear, we're not here  
13 because of your contribution to the science and -- criminal  
14 science and public policy but because you're retained as an  
15 expert in this case; right?

16 A. No, no, I understand, and I didn't mean to sound  
17 defensive if that's what I did. I'm sorry. No, but to me,  
18 I mean that's the whole remaining argument here --  
19 right? -- is can you research this problem or not; right?  
20 And I acknowledge that there's no way to research something  
21 like this and simultaneously rule out 100 percent of the  
22 potential cofounders.

23 So the only other argument is that you just don't  
24 do this type of research; right? To me, I mean it's a  
25 value judgment at this point. All of the -- you know,

ERIC L PIZA, PhD  
8/16/2022

Page 101

## REPORTER'S CERTIFICATE

I, Mindy L. Suurs, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the foregoing testimony of ERIC L. PIZA, Ph.D. was given before me at the time and place stated therein and thereafter was transcribed under my direction;

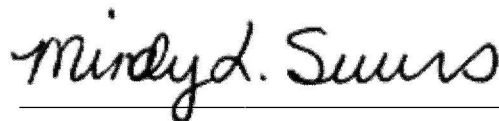
That the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability;

That the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

DATE: August 22, 2022



Mindy L. Suurs  
Certified Court Reporter #2195



# EXHIBIT 3

ARIK VAN ZANDT  
9/14/2022

Page 1

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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HUNTERS CAPITAL, LLC, et al.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 20-cv-00983-TSZ
	)	
CITY OF SEATTLE,	)	
	)	
Defendant.	)	

---

Zoom Video Deposition Upon Oral Examination

Of

ARIK VAN ZANDT

---

DATE: Wednesday, September 14, 2022

REPORTED BY: Mindy L. Suurs, CSR No. 2195



ARIK VAN ZANDT  
9/14/2022

Page 60

1 Q. Okay. And what did Hunters Capital rely on, as  
2 far as you know, to determine that it would take four  
3 months to relet the Hunters -- or the Gamestop space?

4 MR. REILLY-BATES: Objection, asked and answered.

5 A. Yeah, I don't know specifically what they would  
6 have relied upon except for in my conversations with them,  
7 their market knowledge and being intimate with this  
8 obviously being their business.

9 BY MR. CRAMER:

10 Q. And did you do any independent analysis to  
11 determine whether their four-month estimate was reasonable?

12 MR. REILLY-BATES: Objection, asked and answered.

13 A. Nothing specific to that, no.

14 BY MR. CRAMER:

15 Q. Did you -- what analysis did you do to determine  
16 that a 50 percent extension was reasonable to account for  
17 COVID?

18 A. That's an assumption that I made based on the --  
19 one, the Colliers report we talked about, the wait-and-see  
20 approach that was being taken by marked participants. You  
21 know, we talked about my background early and working with  
22 a number of businesses across my practice and just seeing  
23 generally what -- you know, what was being done during that  
24 time period; but it was an assumption that I made that I  
25 felt was reasonable.

ARIK VAN ZANDT  
9/14/2022

Page 61

1 Q. What did you do to see what was being done in  
2 that time period by others?

3 A. Well, that's just -- it's just my everyday life  
4 and the valuation and forensic work that I do working with  
5 as many companies as I do, just understand -- and we talked  
6 about this a little bit before -- understand the -- you  
7 know, the impacts of COVID on various industries and  
8 various types of businesses. For some it had no impact,  
9 for some it actually improved, and for others it actually  
10 was pretty meaningful on the down side; so, you know, it's  
11 just an overall assessment of that, but it's a reasonable  
12 assumption based on this wait-and-see-type concept.

13 Q. And the Colliers report, which I understand  
14 you're going to try to get for us -- that -- that was from  
15 fourth quarter 2021; correct?

16 A. That is the time period of that specific report,  
17 but it covers -- it covers the periods prior and  
18 specifically accounts for, you know, what they saw from the  
19 market during COVID. You know, it's one of those things  
20 where you have to -- you have to live it for a little bit  
21 to understand what that would be. You know, you can't have  
22 immediate concept of research and expectation in the heat  
23 of spring of 2020. It's something that's informed as you  
24 go.

25 Q. Did you look at anything other than the Colliers

ARIK VAN ZANDT  
9/14/2022

Page 62

1 report that contained commercial real estate trends for  
2 2020?

3 A. Again, I've -- I've been living this life of  
4 assessing businesses during COVID since it happened, but I  
5 don't have another specific report. That's the report that  
6 I have.

7 Q. And you didn't look at anything that contained  
8 vacancy rates across 2020 for the Seattle market?

9 MR. REILLY-BATES: Object to the form. Vague as  
10 to "thing."

11 A. Nothing specific.

12 BY MR. CRAMER:

13 Q. Did you look at any reports showing average time  
14 on the market for commercial properties in 2020?

15 A. Not that I can recall specifically.

16 Q. And it was your testimony earlier that your  
17 analysis assumes that the market rent that Hunters could  
18 have charged but for CHOP would have been the same during  
19 COVID as it was prior to COVID. Is that fair?

20 MR. REILLY-BATES: Objection to the extent it  
21 misstates the witness's prior testimony.

22 A. My assumption is that the market rents themselves  
23 would have been the same but for the impacts of COVID and  
24 CHOP.

25 Q. Is that -- what did you do to develop that

ARIK VAN ZANDT  
9/14/2022

Page 203

## REPORTER'S CERTIFICATE

I, Mindy L. Suurs, the undersigned Certified Court Reporter, pursuant to RCW 5.28.010, authorized to administer oaths and affirmations in and for the State of Washington, do hereby certify:

That the foregoing testimony of ARIK VAN ZANDT was given before me at the time and place stated therein and thereafter was transcribed under my direction;

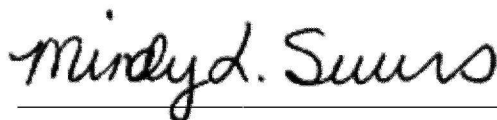
That the sworn testimony and/or proceedings were by me stenographically recorded and transcribed under my supervision, to the best of my ability;

That the foregoing transcript contains a full, true, and accurate record of all the sworn testimony and/or proceedings given and occurring at the time and place stated in the transcript;

That the witness, before examination, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth;

That I am not a relative, employee, attorney, or counsel of any party to this action or relative or employee of any such attorney or counsel and that I am not financially interested in the said action or the outcome thereof;

DATE: September 18, 2022



Mindy L. Suurs  
Certified Court Reporter #2195



# **EXHIBIT 4**





**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF  
WASHINGTON**

HUNTERS CAPITAL, LLC, a  
Washington limited liability company,  
NORTHWEST LIQUOR AND WINE  
LLC, a Washington limited liability  
company, SRJ ENTERPRISES, d/b/a  
CAR TENDER, a Washington  
corporation, THE RICHMARK  
COMPANY d/b/a RICHMARK  
LABEL, a Washington company,  
ONYX HOMEOWNERS  
ASSOCIATION, a Washington  
registered homeowners association,  
WADE BILLER, an individual,  
MADRONA REAL ESTATE  
SERVICES LLC, a Washington  
limited liability company,  
MADRONA REAL ESTATE  
INVESTORS IV LLC, a Washington  
limited liability company,  
MADRONA REAL ESTATE  
INVESTORS VI LLC, a  
Washington limited liability company,  
12<sup>TH</sup> AND PIKE ASSOCIATES LLC,  
a Washington limited liability  
company, REDSIDE PARTNERS  
LLC, a Washington limited liability

**Case No. 2:20-cv-00983 TSZ**

*Expert Report of Arik K. Van Zandt, ASA, CDBV*

company, OLIVE ST APARTMENTS  
LLC, a Washington limited liability  
corporation, BERGMAN'S LOCK  
AND KEY SERVICES LLC, a  
Washington limited liability company,  
MATTHEW PLOSZAJ, an individual,  
SWAY AND CAKE LLC, a  
Washington limited liability company,  
SHUFFLE LLC d/b/a Cure Cocktail, a  
Washington limited liability company,  
on behalf of themselves and others  
similarly situated,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

**Expert Report of  
Arik K. Van Zandt, ASA, CDBV**

**April 28, 2022**

*Expert Report of Arik K. Van Zandt, ASA, CDBV*

to restrictions in the area resulting from the existence of CHOP, the continued public perception of the area as dangerous and unstable, and lost business that may never return. Plaintiffs expressly reserve the right to seek recovery for such ongoing harm.

### **Economic Effects of the COVID-19 Pandemic**

8. The outbreak of COVID-19 caused significant disruption and financial harm to the global economy and the Washington State economy. In the first quarter of 2020, COVID-19 impacted the global economy materially, as cases of the virus exponentially increased. The economic impact of the COVID-19 pandemic was not uniform, however, as the severity of the impact ranged from catastrophic to immaterial, with some business and industries actually performing better as a result of consumer behavior shifts and overall economic demands.

9. China was the first adopter of large-scale quarantines, but as the virus spread to the rest of the world, other economies saw wide-spread shutdowns. Domestically, nearly all major U.S. states put “stay-at-home” restrictions in place with the exception of essential travel for food and medical needs. Prior to formal quarantine restrictions, many companies shut down operations for multiple reasons, including the safety of its employees and preventing the further spread of the virus.

10. On February 29, 2020, Governor Inslee issued Proclamation 20-05, proclaiming a State of Emergency for all counties throughout the State of Washington due to COVID-19.<sup>3</sup> On March 16, 2020, Governor Inslee announced a statewide shutdown of restaurants and bars, with take-out and delivery still being allowed.<sup>4</sup> On March 23, 2020, Governor Inslee issued Washington’s “Stay

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<sup>3</sup> [https://www.governor.wa.gov/sites/default/files/20-05%20Coronavirus%20%28final%29.pdf?utm\\_medium=email&utm\\_source=govdelivery](https://www.governor.wa.gov/sites/default/files/20-05%20Coronavirus%20%28final%29.pdf?utm_medium=email&utm_source=govdelivery)

<sup>4</sup> <https://medium.com/wagovernor/inslee-announces-statewide-shutdown-of-restaurants-bars-and-expanded-social-gathering-limits-bb19095b2251>

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Home, Stay Healthy” order, expanding prior and unprecedented steps taken in February and early March 2020, which included closing schools and restaurants, entertainment venues, and other businesses.<sup>5</sup> The stay-at-home order was extended multiple times until a multi-phase approach was announced and implemented on May 4, 2020 to slowly open up the Washington economy on a county-by-county basis, depending on the achievement of certain testing, contact tracing, and medical resource availability criteria.<sup>6</sup>

11. On June 5, 2020, King County was approved for Modified Phase I of Governor Inslee’s phased reopening plan. Based on Modified Phase I, indoor capacity for bars and restaurants was increased to 25 percent of the facility total capacity. Indoor capacity for in-store retail establishments increased to 15 percent of occupancy.<sup>7</sup>

12. On June 19, 2020, King County’s application to enter Phase 2 of Governor Inslee’s Safe Start recovery plan was approved by the Washington State Department of Health. Phase 2 allowed for bars and restaurants to operate at 50 percent indoor capacity and capacity for in-store retail establishments was increased to 30 percent.<sup>8</sup>

13. Due to rising COVID-19 cases in the fall of 2020, Governor Inslee announced new restrictions on November 15, 2020, again closing bars and restaurants to indoor seating effective November 18, 2020. Indoor retail establishments were limited to 25 percent of occupancy effective November 16, 2020.<sup>9</sup>

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<sup>5</sup> <https://medium.com/wagovernor/inslee-announces-stay-home-stay-healthy-order-4891a7511f5c>

<sup>6</sup> <https://medium.com/wagovernor/inslee-signs-new-covid-19-order-for-phased-re-opening-of-washingtons-economy-ad5ea919ab56>

<sup>7</sup> <https://kingcounty.gov/elected/executive/constantine/news/release/2020/June/03-modified-reopen-plan.aspx>

<sup>8</sup> <https://kingcounty.gov/elected/executive/constantine/news/release/2020/June/19-phase-2-reopening.aspx>

<sup>9</sup> <https://medium.com/wagovernor/inslee-announces-statewide-restrictions-for-four-weeks-c0b7da87d34e>

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14. On February 1, 2021, King County moved back to Phase II, and then moved to Phase III on March 1, 2021, which allowed bars, restaurants, and in-store retail locations to all operate at 50 percent capacity. All statewide capacity restrictions were lifted on June 30, 2021.<sup>10</sup>

## **ECONOMIC DAMAGE ANALYSIS**

### **Hunters Capital, LLC**

15. Hunters Capital, LLC (“Hunters”) is a real estate development, investment, and management company, headquartered near Cal Anderson Park in the Capitol Hill neighborhood, with offices located at 1620 Broadway Street. Hunters owns and manages a portfolio of commercial, multi-family residential, and mixed-use properties in and around CHOP, including 500 E. Pike Street, 1517 12th Avenue, 401 E. Pine Street, 1000 E. Pike Street, 900 E. Pine Street, 426 15th Avenue East, 415 18th Avenue South, 523 15th Avenue East, 1641 Nagle Place, and 501 E. Pike Street.

16. Hunters has suffered economic loss from CHOP in the form of property damage, lost income from tenant leases, lost parking revenue, and additional expenses that would not have been incurred “but for” CHOP. The economic damages that have been incurred by Hunters are based on lost profits and extra expenses. Any future expected lost income due to reduced long-term lease income have been reduced to present value at a risk-adjusted discount rate.

### **Commercial Unit Losses**

17. As a result of CHOP, a number of commercial unit tenants either terminated their lease prior to expiration or did not renew as expected. It is my understanding that all commercial leases

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<sup>10</sup> <https://www.seattletimes.com/seattle-news/politics/limits-gone-for-bars-restaurants-other-businesses-as-covid-19-restrictions-ease-across-washington-state/>



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were on a triple net lease basis. As such, Hunters' damages represent both lost rental income and incurred expenses related to property tax charges, insurance charges, and common area maintenance ("CAM") charges for which tenants of the units would have been responsible. Additionally, as a result of CHOP, Hunters will incur continued economic damages as a result of reduced rental income that Hunters needed to accept in order to fill the vacant units and mitigate any future lost rental income.

18. To compute the economic damages related to loss of rent and incurred expenses for vacant units, Hunters provided an analysis of the lost rent and incurred expenses over the total number of months the specific unit was vacant. In instances where a lease term was expiring as of a certain date for a specific tenant, Hunters estimated a period of vacancy in their budget process.

19. Based on a report of the Puget Sound commercial real estate market prepared by Colliers, the COVID-19 pandemic has created a wait and see approach for commercial tenants.<sup>11</sup> The Colliers report shows that rental rates for Class B commercial properties, which is a reasonable proxy for the type of commercial properties owned by Hunters, were largely unaffected. To account for the "wait and see" market caused by these COVID-19 trends, I have extended the budgeted vacancy period by 50.0 percent to account for the market impacts of CHOP. For purposes of this analysis, I have assumed and increased vacancy period as compared to the budgeted vacancy to account for the impact of COVID-19, since commercial tenants may have been in a "wait and see" period for overall economic improvement, as compared to the remaining

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<sup>11</sup> "Seattle Office 21Q4," Colliers

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vacant period prior to re-leasing a vacant space being due to the impact of CHOP on Hunters' ability to re-lease units.

20. For purposes of this analysis, I have made additional adjustments to the calculations of damages incurred by Hunters based on my review of the financial information, discussions with representatives of Hunters, and expectation of commercial practices "but for" CHOP, including the elimination of broker fees and tenant improvements, as these costs would have been incurred at a future date of re-leasing.

21. As shown in Schedule 1, the calculation of economic damages related to commercial tenants has been conducted on a tenant-by-tenant basis. Total economic damages for Hunters for the loss of commercial tenant income related to CHOP is \$1,419,203.

### **Residential Losses**

22. Hunters owns two residential properties within the CHOP zone that incurred economic damages: (i) Lots II – The Broadway Building and (ii) the Dunn Automotive Building. As a result of CHOP, there was a mix of tenants moving out, not renewing leases, and a difficulty in attracting new tenants for an extended period. Based on Hunters' experience in leasing the residential units, Hunters' management determined that residential rental income loss extends from June 8, 2020 through May 8, 2021. This 11-month period approximately aligns with the start of CHOP and with the removal of the barricades in front of the East Precinct, which occurred on May 5, 2021.

23. Hunters prepares monthly budgets on an annual basis, which are finalized in December of each year. I have reviewed the variance between the budget and actuals for January 2020 through May 2020, which represents the portion of the year prior to CHOP, and accounts for a number of months after the onset of the COVID-19 pandemic. Hunters outperformed the budget in each

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month for both the Lots II building and the Dunn Automotive Building despite not being able to foresee the impact of the COVID-19 pandemic at the time the budgets were prepared in December 2019. As such, we determine that COVID-19 did not have an impact on Hunters' residential operations, as evidenced by the outperformance of the actual income compared to the budgeted income during the period from March 2020 through May 2020. Based on the analysis performed by Hunters, which I have found to be reasonable, damages resulting from residential losses totaled \$749,480, as shown in Schedule 2.

#### **Abated Rent**

24. Hunters incurred damages related to rent abatement for various commercial tenants as a result of CHOP. Based on discussions with their tenants, Hunters' commercial tenants were having a difficult time paying rent as a result of CHOP's interferences with the operations of the commercial businesses. Hunters made the decision to provide rent abatement as a way to ensure that these tenants would remain in place once the CHOP zone returned to a more stabilized level and tenants would once again be able to pay rent. This was a way for Hunters to minimize future damages by not needing to risk evicting commercial tenants and having vacant units with the uncertainty regarding the timing of when future tenants would be willing to move in and the potentially reduced rent that future tenants would demand as a result of CHOP negatively impacting the image of Capitol Hill.

25. Hunters provided a generated report that tracked accumulated rent abatements for the various buildings they own. I rely on the provided rent abatement report as being accurate. Based on the provided rent abatement report, Hunters incurred damages of \$648,343, as presented in Schedule 3.

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property damage, and lost rental income. Unicorn Bar, a tenant of 12<sup>th</sup> and Pike, negotiated a rent deferment with Madrona in July 2020, as they would have applied for their restaurant license earlier “but for” CHOP. As a result, the August 2020 rent was forgiven, and rental income for future months was deferred to a later date. The total economic damages incurred by 12<sup>th</sup> and Pike is \$14,197.65. Madrona Services incurred additional security service costs, time spent handling items caused by CHOP events, and loss of management fees from lost rental income. The economic damages incurred by Madrona Services is \$13,071.11. The total economic damages incurred by the Madrona entities combined is \$58,214.16.

#### **POTENTIAL ADDITIONAL ANALYSES**

I reserve the right to clarify, amend, and/or supplement my opinions based on additional information that may be provided to me and the development of additional information as this matter proceeds.

Dated: April 28, 2022

  
Arik K. Van Zandt, ASA, CDBV  
Managing Director